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Summation - Mr. Zuckerman

1                   I'd like to read what the DD5 says about the interview  
2 that Detective Martinez took with Walter Cobb. On February 12,  
3 2001, at approximately 11:15 hours, the undersigned, Detective  
4 Martinez, spoke to Walter Cobb regarding what he had seen in  
5 relation to the above incident. He stated the following in sum  
6 and substance: The witness stated that he has been working in  
7 Parkchester for around a year. Furthermore, he stated that he  
8 recognized the Parkchester officer, Manganiello, from working  
9 at Parkchester, and knows him by face and name for around a  
10 year. He stated that he positively recognized Officer  
11 Manganiello as the Parkchester officer that exited the basement  
12 at 1700 Metropolitan Avenue after he heard the gunshots.

13                   Paragraph 2: Walter Cobb stated it was around 10:10  
14 or so, he was walking to the basement entrance and he was next  
15 to the basement window while on the sidewalk when he heard four  
16 shots that were muffled. There was two and then two more. He  
17 then approached the basement door when it first opened and a  
18 Parkchester officer came rushing out. It was Manganiello who  
19 he saw. I said to him, I had just heard four shots and he  
20 said, so did I. He was excited looking. He took off in a  
21 hurry. I saw him go up the street towards the circle. I saw  
22 the door was closing and did not have the key, so I grabbed it  
23 to go inside to do my work. I started working on the compactor  
24 at the end of the hallway. As I walked into the basement to  
25 the compactor and was starting to work when a Verizon guy came

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1 to me regarding a locked storage room that he needed to get  
2 inside. I opened the door and we both looked inside. We  
3 didn't see any telephone equipment, so we left the room, but I  
4 left the door open.

5 I went on doing my work, then I decided to take a look  
6 inside this room. It was about a minute or two later, I saw  
7 what looked like a stack of clothing. The room was dark. So I  
8 was using my flashlight and took a closer look. I saw the guy  
9 lying face down with a uniform on. His hat and radio was on a  
10 stove in the room. I looked close and saw a gunshot wound in  
11 the back of his head. I ran out and got the telephone guy, the  
12 Verizon worker, and we went back inside the room with them. We  
13 then left the room and came outside. I called the security  
14 office and there was no answer. I then called 911. That's the  
15 DD5 of Detective Richard Martinez's interview with Walter Cobb,  
16 same day that Albert Acosta was murdered.

17 You also heard that Detective Martinez interviewed  
18 Richard Huello that day. Richard Huello is the Verizon worker.  
19 Mr. Huello is a Verizon worker who was working in another room  
20 in the basement of 1700 Metropolitan Avenue with a telephone  
21 earpiece in his ear. A DD5 was prepared by Detective Martinez  
22 of his interview of Mr. Huello. This DD5 is in evidence twice  
23 as well, as Plaintiff's Exhibit 4 and Defendant's Exhibit K.

24 Later on February 12, 2001, Detective Martinez  
25 interviewed Officer Perez at the 43rd Precinct. A DD5 was also

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1 prepared by Detective Martinez of that interview as well. It  
2 is in evidence twice also as Plaintiff's Exhibit 5 and  
3 Defendant's Exhibit Q, page 1. I'd like to read paragraph 2  
4 from the interview that Detective Martinez conducted with  
5 Officer Perez. Paragraph 2: I was at the scene when I noticed  
6 the Parkchester cop emerging from the crowd. He was all messy  
7 looking with white plaster-like powder on his jacket sleeve.  
8 He was red-faced and breathing heavy and had sweat on his face.  
9 I then saw other officers take him to a car. We first  
10 responded to the scene on a 1013 call to 1700 Metropolitan  
11 Avenue. We went inside the basement and saw the guy that was  
12 shot. We did a small canvass and spoke to the maintenance guy,  
13 Cobb, who heard the shots.

14 The investigation then continued. On February 16,  
15 2001, Detective Linda Palacio interviewed a Parkchester  
16 security officer named Harry Plaza. She prepared the DD5s of  
17 that interview and her interview with Harry Plaza is contained  
18 on the second page of Defendant's Exhibit R-8. And I would  
19 like to read to you, ladies and gentlemen of the jury, the  
20 portion of Defendant's Exhibit R-8, the DD5, that contains the  
21 interview by Detective Palacio with Harry Plaza. Harry Plaza  
22 has SPO status, has been a security officer in Parkchester for  
23 the last five years, works midnight, 12 to 8. He was off duty  
24 on Monday. He has worked eight months before he went to days.  
25 I'm sorry. He has worked with Acosta for two years on the 4 to

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1 12 shift and also worked with Manganiello for eight months  
2 before he went to days.

3 He has heard Manganiello mention that he has a carry  
4 permit. He also knows that Manganiello had an incident with  
5 Officer Hicks and the supervisors were aware and they received  
6 some type of disciplinary action, but there was another inside  
7 the locker room with Manganiello and Acosta after the Hicks  
8 incident that we broke up and no supervisor was notified. It  
9 was a shoving match and we had to pull them apart. That's  
10 Defendant's Exhibit R-8 in evidence, one of the DD5s that you  
11 can review when you deliberate.

12 On February 17, 2001, Detective Agostini interviewed a  
13 Parkchester security officer by the name of Anthony Langhorn.  
14 Detective Agostini prepared a DD5 of that interview. It is in  
15 evidence as Defendant's Exhibit P-2 and I would like to read to  
16 you a portion of that interview. He, SPO, special patrol  
17 officer, special Parkchester patrol officer Anthony Langhorn  
18 stated both Albert and Anthony were hotheads. He is a good  
19 friend of Anthony Manganiello and he told me that he had a  
20 pistol license and he gave Anthony his nine millimeter to hold.  
21 The undersigned advised him to go to Yonkers PD and attempt to  
22 recover his gun. The undersigned spoke about Anthony  
23 Manganiello's injury and his finger due to him lifting his  
24 treadmill and Langhorn stated he does not have a treadmill.

25 He also stated that one time Anthony Manganiello told

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1 him he was driving home one time and someone cut him off. He  
2 then told Langhorn he pulled along side the vehicle and pointed  
3 his gun to the driver. That DD5, Defendant's Exhibit P-2, is  
4 in evidence and I would ask, ladies and gentlemen of the jury,  
5 that you please review it during your deliberations.

6 On February 12, 2001, a Detective Dowd of the 43rd  
7 Precinct interviewed a Parkchester construction worker named  
8 Sal Miro. Detective Dowd prepared a DD5 of that interview.  
9 That DD5 is in evidence as Defendant's Exhibit Z-7.

10 MR. JOSEPH: Judge, I don't believe this is in  
11 evidence, looking at my notes.

12 THE COURT: If it's not in evidence, then it won't go  
13 to the jury. I kept a record for a while, but I don't know  
14 that I have that number on it at all. Do either of you, Dennis  
15 or Anna, have a record of it?

16 THE DEPUTY CLERK: Which one is it? What number?

17 MR. JOSEPH: Z-7.

18 MR. ZUCKERMAN: We moved all of the DD5s into  
19 evidence.

20 THE COURT: They don't all go into evidence. They  
21 only go in evidence if they use them. Otherwise, they are just  
22 in your book. I have a Z, no Z-7.

23 MR. JOSEPH: Judge, I don't think P-2 is in evidence  
24 either.

25 MR. ZUCKERMAN: They were admitted into evidence, your

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1 Honor.

2 THE COURT: An individual piece of paper is shown to a  
3 witness and identified before it goes in. The fact that you  
4 provided me with a book with 5,000 pages does not mean they are  
5 all in evidence. You understand that.

6 MS. OKEREKE: Respectfully, your Honor, during  
7 Detective --

8 THE COURT: We don't need both of you.

9 MR. ZUCKERMAN: -- Detective Agostini's testimony we  
10 moved the remainder of the DD5s into evidence and they were  
11 admitted.

12 MR. JOSEPH: No, they were not, Judge.

13 THE COURT: My view is, I don't remember that  
14 happening, so we won't talk about that particular DD5.

15 MR. JOSEPH: Judge, I am going to ask for a corrected  
16 charge on P-2. It is absolutely improper just what happened.

17 MS. OKEREKE: Your Honor, at the very end of Detective  
18 Agostini's defendants' examination of him, defendants went DD5  
19 by DD5 and your Honor requested that instead of defendants  
20 exhaustively going into each DD5 that all of the DD5s be  
21 entered into evidence and the jury would have another  
22 opportunity to view them.

23 MR. JOSEPH: Absolutely not, Judge.

24 THE COURT: Look at the transcript. It's not a big  
25 deal.

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1                   MR. JOSEPH: Judge, what the defense is doing right  
2 now is highly improper.

3                   MR. ZUCKERMAN: Detective Dowd interviewed Sal Miro.

4                   MR. JOSEPH: Judge, this shouldn't be up there. This  
5 isn't in evidence.

6                   THE COURT: We are assuming it's not evidence. And if  
7 something changes that decision, you will be the first to know,  
8 and we can talk to the jury about it at the end of summations  
9 and then we will have plenty of time. But at the moment, since  
10 only you and your colleague recall that they went into  
11 evidence, we are not letting them in now.

12                  MR. ZUCKERMAN: Detective Agostini interviewed Sal  
13 Miro. Sal Miro --

14                  THE COURT: Did you show these to your adversary,  
15 these charts, before you started to put them up on the wall?

16                  MR. ZUCKERMAN: They are DD5s that were in evidence.

17                  THE COURT: But the fact is, that's no longer  
18 apparently agreed to.

19                  MR. ZUCKERMAN: They are just blowups of DD5s --

20                  MR. JOSEPH: Whatever he put in evidence in front of  
21 the jury is in evidence, but he's pulling out things that he  
22 didn't put in evidence.

23                  MR. ZUCKERMAN: They are in evidence.

24                  THE COURT: What I'm talking about is a little  
25 different. I prefer, if in fact you ever come by again, that

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1 before you put charts up -- let's keep going.

2 MR. ZUCKERMAN: Detective Agostini interviewed a  
3 Parkchester construction worker named Sal Miro. Sal Miro then  
4 sent Detective Agostini to the pizzeria, the pizzeria that  
5 plaintiff Anthony Manganiello admitted that he ate at once or  
6 twice a week. Detective Agostini interviewed Chris Tartone,  
7 the owner of the pizzeria, and Mr. Tartone in his interview  
8 with Detective Agostini told Detective Agostini that a friend  
9 of his named Michael Booth -- that he overheard a friend of his  
10 by the name of Michael Booth that Mr. Manganiello asked him if  
11 he was selling an illegal gun.

12 And then Detective Agostini interviewed Mr. Booth.  
13 The interviews that Detective Agostini had with Chris Tartone  
14 and Michael Booth are in evidence. I'd like to read portions  
15 of the interview that Detective Agostini conducted with Chris  
16 Tartone. Officer Manganiello came to his pizza shop, Pizza  
17 Place, and was asking people if they were selling the gun.  
18 Chris stated Officer Manganiello came to this pizza shop and  
19 was asking people if they would sell him a gun. Chris stated  
20 Officer Manganiello had a gun book in hand. Chris states a  
21 friend of his named Michael Booth told him that Officer  
22 Manganiello asked him if he was selling an illegal gun. Mike  
23 then told him he could get in a lot of trouble and could get 20  
24 to 25 years.

25 Chris states Officer Manganiello comes to his pizza

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1 shop maybe once a month. Chris states Michael Booth drives a  
2 white truck with tinted windows, and he is also the  
3 neighborhood loan shark. Chris states that he will be in on  
4 Thursday at around 12 noon.

5 Chris Tartone wrote a statement on the above incident.  
6 The undersigned showed Chris Tartone a photo book consisting of  
7 white males and he picked out Anthony Manganiello as the person  
8 who went to this pizza shop and asked for a gun. This DD5 is  
9 in evidence. It's the DD5 of an interview that Detective  
10 Agostini conducted with Chris Tartone, the owner of the pizza  
11 shop, that Mr. Manganiello testified on his examination that he  
12 ate at once or twice a week.

13 So as you can see, Chris Tartone led Detective  
14 Agostini to Michael Booth. Michael Booth was then interviewed  
15 by Detective Agostini and that DD5 is in evidence as  
16 Defendant's Exhibit O-3. I'd like to read a portion of that  
17 DD5.

18 He, Michael Booth, stated Officer Manganiello  
19 approached him one time when he was sitting in his truck by the  
20 bank next to Macy's and asked him if he had arrived. Michael  
21 told him it's a big rap for a small price if he sold him one.  
22 Michael has seen Manganiello numerous times around the  
23 neighborhood and pizzeria. That DD5 is in evidence as  
24 Defendant's Exhibit O-3.

25 Also in evidence as Defendant's Exhibit N-3 is a DD5

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1       in which Detective Agostini had Michael Booth view a photo book  
2       and it states on March 1, 2001, at approximately 1405 hours,  
3       Michael J. Booth viewed a box of photos consisting of white  
4       males and he picked out Anthony Manganiello as the person  
5       looking for a ride. That's Defendant's Exhibit N-3 and it's in  
6       evidence.

7               You heard testimony from retired detective, NYPD  
8       Detective Derrick Parker. Detective Parker never worked in the  
9       43rd detective squad. Rather, at the time of the Acosta  
10      homicide he was working in the NYPD intelligence unit.

11              On February 14, 2001, Detective Parker received a  
12      phone call from a confidential informant that Detective Parker  
13      was working with. He was in jail at Rikers Island. The  
14      confidential informant that Detective Parker was working with  
15      told him that another inmate named Terrence Alston, who lived  
16      in Parkchester, had information about a homicide in the Bronx.  
17      Detective Parker went to Rikers Island and met with Terrence  
18      Alston. Mr. Alston told Detective Parker that he had  
19      information concerning the shooting death of a security guard  
20      in the Bronx.

21              Detective Parker testified that he immediately called  
22      the 43rd Precinct and confirmed that the 43rd detective squad  
23      was indeed investigating such a homicide. The 43rd detective  
24      squad immediately sent two detectives, Detective Ramos and  
25      Detective Bencenvingo, to Rikers Island to meet with

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1       Mr. Alston. Detective Ramos prepared a DD5 of his interview  
2 with Mr. Alston, and I would like to read to you the statement  
3 that Mr. Alston gave to Detective Ramos. That is in evidence  
4 as Defendant's Exhibit F-8; again, Mr. Alston's statement.

5           I, Terrence Alston, make the following statement. In  
6 late August 2000, a uniformed security guard from Parkchester  
7 approached me and asked if I could do him a favor. I asked  
8 him: What is the favor. He told me he wanted another security  
9 guard killed. I asked him why he wanted him called and he said  
10 he wanted him killed because he was expletive in with a girl.  
11 He then asked me if I needed a gun and I told him I have one  
12 already. He asked me, what is the price? I told him I did not  
13 know right now. I'll get back to you. Two days later I saw  
14 him in front of 1560 Union Port Road. We talked about setting  
15 it up in the building in the daytime.

16           He stated that he would call for assistance and when  
17 the guy showed up I would be waiting for him. I told him that  
18 I would get back to him. I told him that when it was time he  
19 would show me the guy. He also gave me a master key to the  
20 buildings in Parkchester.

21           I went to court in October and pled out to attempted  
22 possession of a weapon and got remanded. The reason I did not  
23 do the hit was because I was healing from being shot up on  
24 August 22, 2000. This is DD5, interview conducted by Detective  
25 Ramos and Detective Bencenvingo of Terrence Alston on February

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1 14, 2001.

2 On February 15, 2001, one day later, Detective  
3 Agostini, along with a Sergeant Martinez, not to be confused  
4 with Detective Martinez, and Detective Palacio, went to Rikers  
5 Island and reinterviewed Terrence Alston. Detective Agostini  
6 prepared a DD5 of that interview. It is in evidence as  
7 Defendant's Exhibit F-2. I'd like to read to you a portion of  
8 that DD5. He stated the following, being Mr. Alston:

9 He, Mr. Alston, was approached last year, September  
10 2000, by a male white heavyset who works as a Parkchester  
11 security officer to do him a favor. The favor was to kill  
12 another security officer for him. When Terrence, also known as  
13 Murdock, asked why, he stated, over a girl. Terrence asked,  
14 how much, and he did not give a price. Terrence stated, the  
15 Parkchester officer asked him, do you need a gun, and Terrence  
16 stated, no. I have one.

17 Terrence stated, when the hit was going to go down,  
18 the security officer will point out the other Parkchester  
19 security officer he wanted killed. Terrence stated he met  
20 twice with the security officer and spoke about the hit on the  
21 other Parkchester security officer. Terrence Alston, a/k/a  
22 Murdock, then stated, Johnny, who he had been talking to, sold  
23 a .22 caliber gun to a white male security officer for \$75.  
24 Terrence is trying to convince Johnny, who was dating his  
25 daughter, to give this information to the police. Terrence

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1 states, Johnny is scared he will be arrested.

2 Detective Agostini testified that he showed Mr. Alston  
3 a photo book and that Mr. Alston identified Mr. Manganiello as  
4 a person who had approached him. That DD5 is in evidence as  
5 Defendant's Exhibit F-2.

6 The Acosta homicide investigation lasted approximately  
7 two months before ADA Christine Scaccia, a Bronx Assistant  
8 District Attorney with 17 years' experience and who was  
9 prosecuted over a 100 homicides, presented the case to the  
10 grand jury. During that time Detective Agostini and ADA  
11 Scaccia were in frequent contact and Detective Agostini  
12 provided ADA Scaccia with all the information that he received  
13 during the course of the investigation.

14 ADA Scaccia determined, based upon the independent  
15 interviews of witnesses that she conducted, that there was  
16 sufficient cause to proceed with the prosecution of  
17 Mr. Manganiello, and she authorized Mr. Manganiello's arrest.

18 You heard from ADA Scaccia that the Bronx District  
19 Attorney's Office decides whether to prosecute a criminal  
20 defendant, not NYPD police officers or detectives. You also  
21 heard from ADA Scaccia that none of the defendants asked,  
22 suggested, or pressured her to prosecute Mr. Manganiello.  
23 You've heard her testify that police officers don't determine  
24 what evidence she presents to a grand jury. Additionally,  
25 police officers don't sit in the grand jury as evidence is

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1 presented by the Assistant District Attorney.

2 Then you heard that ADA Scaccia presented this case to  
3 the grand jury. You also heard that ADA Scaccia had her 120  
4 hours after Mr. Manganiello's arrest to present her case to the  
5 grand jury. ADA Scaccia testified that between 16 to 23 people  
6 living in Bronx County hear the evidence as grand jurors and  
7 determine if there is reasonable cause to determine if the  
8 suspect has committed the crimes he is charged with. ADA  
9 Scaccia testified that she has broad discretion as to the  
10 witnesses she presents to the grand jury.

11 She testified that in this case she independently  
12 interviewed all of the witnesses as she presented to the grand  
13 jury. ADA Scaccia also testified that she had access to the  
14 entire contents of Detective Agostini's case file for her use  
15 in the grand jury, even though portions of that case file later  
16 went missing, after the grand jury indicted him. ADA Scaccia  
17 also testified that Mr. Manganiello had the opportunity to  
18 present witnesses to the grand jury if he desired, and that he  
19 declined to do so.

20 There was seven witnesses that ADA Scaccia presented  
21 to the grand jury, three of them were civilians: Walter Cobb,  
22 Chris Tartone, and Terrence Alston. Four NYPD officers  
23 testified, Officer Nieves, Officer Perez, Detective Agostini,  
24 and Officer Casciano. The grand jury minutes are in evidence  
25 as Plaintiff's Exhibit 38, and I would encourage you to read

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1 them as you deliberate.

2 I would like to read just a portion of Walter Cobb's  
3 grand jury minutes, Walter Cobb's testimony to the grand jury:  
4 Question by Ms. Scaccia: Now, as you were approaching 1700  
5 Metropolitan Avenue, did something unusual take place?

6 "A. As I approached the rear exit, which is on the avenue  
7 itself, I heard what appeared to be a muzzle, or gunshots.

8 "Q. Four gunshots?

9 "A. At least four gunshots, at least to four or five steps  
10 until I hit the door, approached the door.

11 "Q. These gunshots, did they happen one right after the other  
12 or was there a pause?

13 "A. Two first and then two after. There was a slight pause  
14 between the four.

15 "Q. Okay. Now, as you approached the doorway is there a time  
16 when you get right in front of the door?

17 "A. I just dismissed it immediately from my mind, almost  
18 immediately I approached the door.

19 "Q. Okay. What happened when you approached the door?

20 "A. I was using my comp key when the door flew open. I was  
21 trying to enter the building, the door, someone from inside the  
22 door.

23 "Q. Now, this door, how does it open, do you push it in? How  
24 does it open?

25 "A. You push it in.

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1       "Q. As soon as the door flew open from inside did you see  
2       anyone on the other side of the door?

3       "A. Yes, I did.

4       "Q. Who was on the other side of that door?

5       "A. This man which I know is named Manganiello was stepping  
6       out."

7                   That's a portion of what Walter Cobb testified to the  
8       grand jury.

9                   Mr. Alston, who died between the time of the grand  
10       jury proceedings and the criminal trial, also testified before  
11       the grand jury, and I would just like to read a small portion  
12       of Terrence Alston's grand jury testimony as well.

13       Ms. Scaccia's question: Can you please tell the members of the  
14       grand jury if anything unusual took place at about that time?

15       "A. Yes.

16       "Q. What happened?

17       "A. A security officer approached me about accepting a  
18       contract to kill another security officer.

19       "Q. Now, where were you when the security officer approached  
20       you?

21       "A. In front of my building, 1560 Union Port Road.

22       "Q. Have you talked to the security officer before?

23       "A. No.

24       "Q. When he approached you, did he call you by his name?

25       "A. Yes. He called me by my nickname, Murdock."

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1                   Another portion of Terrence Alston's grand jury  
2 testimony:

3        "Q. Now, what exactly, to the best of your recollection, did  
4 the security officer say to you and what, if anything, did you  
5 say back to him?

6        "A. He asked me if I would accept a contract to kill another  
7 security officer. I told him yes.

8        "Q. Did he tell you why?

9        "A. He said it was over a little conflict, over a girl."

10                  One more portion of Terrence Alston's grand jury  
11 testimony:

12        "Q. Now this security officer, did he have any other  
13 conversations after that?

14        "A. Yes, a couple of days later.

15        "Q. Okay. How did that happen?

16        "A. He approached me, he gave me a master key to the building  
17 to get to the basement, he showed me where I was going to do  
18 it, and he also asked me if I had a gun. He told me he would  
19 give me a gun. I told him I had a gun already, I wouldn't need  
20 a gun."

21                  That's portions of Terrence Alston's grand jury  
22 testimony as part of Plaintiff's Exhibit 38, the entire grand  
23 jury minutes that, ladies and gentlemen of the jury, you will  
24 have for your review when you deliberate in this case.

25                  Mr. Tartone also testified before the grand jury. I

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1 would encourage you to read Mr. Tartone's entire testimony, but  
2 in sum and substance Mr. Tartone testified that Mr. Manganiello  
3 came to his pizzeria to eat from time to time and that on one  
4 occasion he overheard Mr. Manganiello asking someone if he  
5 could purchase a gun.

6 Officers Nieves and Perez also testified before the  
7 grand jury. I refer you to their testimonies which are  
8 contained as part of the grand jury minutes in Plaintiff's  
9 Exhibit 38, the grand jury minutes in evidence.

10 Detective Agostini also testified before the grand  
11 jury. The grand jury minutes reflect that the only thing that  
12 Detective Agostini testified to was that the body of the victim  
13 was indeed that of Albert Acosta. Mr. Manganiello presented no  
14 evidence to the grand jury. The grand jury voted to indict  
15 Mr. Manganiello for murder, manslaughter, and unlawful  
16 possession of a gun after hearing the evidence.

17 In an attempt to persuade you into believing that the  
18 grand jury indictment was obtained improperly, plaintiff has  
19 attempted to distort the facts and discredit the defendants.  
20 Plaintiff has attacked the officers with various testimonies  
21 that they have given during the last seven plus years.

22 You heard Officer Nieves testify that the grand jury  
23 proceedings were over seven years ago. She testified at a  
24 criminal pretrial hearing some four years ago. She testified  
25 as to Mr. Manganiello's criminal trial that also took place

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1 four years ago. She testified at a deposition in this case  
2 earlier this year. Finally, she testified before you at this  
3 trial. And in each of these proceedings she testified as to  
4 the 30 minutes out of her long career that she spent in the  
5 NYPD.

6 Similarly, Officer Perez, Detective Abate, and  
7 Detective Agostini testified up to five times in this matter  
8 over the last seven plus years in the various proceedings that  
9 Officer Nieves testified at. With respect to Detectives Abate,  
10 Agostini, and Martinez, this case was just one of hundreds or  
11 thousands of cases that they were responsible for during their  
12 long careers as NYPD detectives.

13 Ladies and gentlemen of the jury, can a person  
14 reasonably be expected to remember everything about an event  
15 that took place over seven years ago, even an important event,  
16 or even three or four years after the event? Or would a person  
17 remember what was important about the event in question, which  
18 is what I submit to you that Officers Nieves and Perez,  
19 Detectives Abate, Martinez, and Agostini have done in this  
20 case.

21 Plaintiff has also tried to make you believe that  
22 Detective Agostini purposely lost the box containing the case  
23 file. However, you've heard from Detective Agostini that well  
24 after the grand jury proceedings he was transferred from the  
25 43rd Precinct to another unit of the NYPD at a different

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1 location. Some years after the grand jury indictment ADA  
2 Scaccia asked Detective Agostini for the box containing the  
3 case file because the criminal trial was coming up. Detective  
4 Agostini told you that he went back to the 43rd Precinct to  
5 look for the files. What he found was that the room where he  
6 had left it had been renovated and completely changed. Despite  
7 Detective Agostini's best efforts, the box containing his case  
8 file simply cannot be located.

9 You've also heard a lot of testimony concerning  
10 Terrence Alston. There is no dispute that Terrence Alston had  
11 a criminal background. But what we would ask you to focus on  
12 is that he had material information about the Acosta homicide.  
13 He lived in Parkchester, he was able to describe  
14 Mr. Manganiello's physical appearance, he identified Mr. Alston  
15 from a photo book, explained how Mr. Manganiello approached him  
16 and asked him if he would kill a Parkchester security guard,  
17 explained that Mr. Manganiello had given him a set of keys to  
18 portions of the basement area that other persons did not have.

19 He gave all of this information to ADA Scaccia and a  
20 cooperation agreement was entered into between the Bronx  
21 District Attorney's Office and Mr. Alston. The judges involved  
22 in the criminal proceedings were fully aware of the agreement  
23 that the Bronx District Attorney's Office made with Mr. Alston.

24 You've also heard considerable testimony about persons  
25 named Johnny Baker and Mark Damon. However, the information

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1 that Mr. Damon provided to Ms. Scaccia, namely  
2 Mr. Manganiello's purchase of a .22 caliber gun, was never even  
3 presented to the grand jury. It, therefore, played absolutely  
4 no really in the grand jury's decision to indict  
5 Mr. Manganiello. I submit, therefore, that this issue is  
6 nothing but a red herring.

7 During this trial plaintiff has also placed a lot of  
8 emphasis on this Sprint report which he claims evidences that  
9 Officer Nieves and Perez heard over their radios the identity  
10 of the victim on their way to the scene of the incident.  
11 However, there is no dispute that Parkchester and NYPD radios  
12 are on a different frequency. There is also no question that  
13 things were chaotic and there was a lot going on. In fact, you  
14 have heard that there were many Parkchester radio transmissions  
15 that morning. Simply, Officers Nieves and Perez have testified  
16 truthfully to what they heard and what they saw that day.  
17 There was nothing to contradict their testimonies.

18 Now, Anthony Manganiello testified during this trial  
19 that at least nine different people lied. He testified that  
20 Walter Cobb lied. He testified that Chris Tartone lied. He  
21 testified that Michael Booth lied. He testified that Terrence  
22 Alston lied. He testified that Detective Agostini lied. He  
23 testified that Detective Abate lied. He testified that  
24 Detective Martinez lied. He testified that Officer Nieves  
25 lied. And, finally, he testified that Officer Perez lied. But

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1 there was no lying here. Defendants conducted their duties  
2 honestly, properly, and professionally. There was no reason  
3 for defendants to lie. There was no motive for defendants to  
4 lie.

5 Ladies and gentlemen of the jury, plaintiff would have  
6 you believe that he was framed, but that just did not happen.  
7 Therefore, your verdict should be for the defendants.

8 Thank you very much.

9 THE COURT: Mr. Joseph, you're up.

10 MR. JOSEPH: Thank you, Judge.

11 Good morning, ladies and gentlemen. On behalf of my  
12 client I would also like to thank you for fulfilling your civic  
13 responsibilities and serving as jurors in this case. I know  
14 you have taken some time away from your personal lives, and we  
15 do appreciate it. We couldn't do this without you.

16 When we speak about this process it's often said,  
17 above all, let the system be fair. If the process is fair, the  
18 result will be just. But I think when you look at the big  
19 picture and you recall all of the pieces of the evidence that  
20 you have heard throughout the course of this trial, I think the  
21 only conclusion that you can really draw is, the system was not  
22 fair to Anthony Manganiello. The process was anything but  
23 fair. In fact, I think the only conclusion you can really draw  
24 is that Anthony Manganiello played into a stacked deck from day  
25 one.

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1                   Ladies and gentlemen, I think it's appropriate that we  
2 are a week or so away from the 4th of July when hearing this  
3 case, a week or so away from our country's birthday. You got  
4 to remember, our country arose out of a yearning to be free  
5 from government oppression, bad things by government actors. I  
6 think this case makes us think about in some ways what the  
7 Constitution is really about. Unfortunately, the one thing --  
8 the sad truth of the matter is, the Constitution is guaranteed  
9 to mean nothing unless the police obey them.

10                  So the question becomes, who holds the police  
11 accountable for their actions? My question to you, ladies and  
12 gentlemen, if not you, then who?

13                  We are here to ask you today to hold each and every  
14 one of these defendants responsible for the constitutional  
15 violations they committed against Anthony Manganiello. And  
16 you're here because this system wasn't fair, because he played  
17 into a stacked deck. Because it was a manipulation of the  
18 system, Anthony Manganiello spent ten days in jail, ten days  
19 away from his family, ten days away from his life, in jail. He  
20 was deprived of a liberty interest. Ladies and gentlemen, what  
21 greater constitutional right do we have than our own liberty.

22                  Now, you're going to listen to the judge's charge on  
23 constitutional rights. I submit to you I believe you're going  
24 to hear that loss of deprivation is sufficient for a  
25 constitutional right.

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1                   And, also, ladies and gentlemen, while -- because the  
2 system was unfair, Mr. Manganiello has waited over seven years  
3 to receive the justice that he's entitled to and that I hope  
4 you agree he's entitled to.

5                   You've heard a lot of talk about elements, elements we  
6 haven't established for a malicious prosecution here. One, the  
7 prosecution terminated in the plaintiff's favor while he was  
8 acquitted. He was found not guilty, not guilty. That's a  
9 termination in his favor of this criminal proceeding.

10                  You also heard about an initiation. Well, how did  
11 this criminal case come about? How did it start? Well, it's  
12 Exhibit No. 24 and it's -- Defendant Agostini signed a felony  
13 complaint.

14                  I know the defendants have spent a lot of time talking  
15 to you about the district attorney's role, the grand jury's  
16 role, but when you look at Exhibit 24, it's in evidence, you're  
17 going to see -- I'm sorry I don't have blowups for you. It's  
18 Detective Luis Agostini is who started this criminal  
19 prosecution, not the district attorney's office, Luis Agostini  
20 swore that Anthony Manganiello did cause the death of a person,  
21 namely, Albert Acosta. This is in evidence. It's not the  
22 district attorney's signature. It's Detective Luis Agostini's.

23                  You also heard, I think, throughout the course of the  
24 trial, the defendants here have sort of tried to pass the buck  
25 onto the DA. The district attorney is an advocate. They are

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1 not out there investigating crimes. They are only going  
2 forward based upon what information they are given. If they  
3 are given lies, no knowing that they are lies, they go forward  
4 with the lies. It's junk in, junk out. It's the defendants'  
5 responsibility not -- to pass on truthfully credible  
6 information and make it known to the district attorney when  
7 they know someone is lying. That's their obligation.

8 You heard also, since we are talking about initiation,  
9 that an officer has to go before a judge and give them certain  
10 information to be able to get authorization or a warrant. Did  
11 any of these witnesses tell a judge that Mr. Alston lied to  
12 them? Did any of these witnesses tell them that Mr. Alston was  
13 getting out of jail in exchange for his testimony? Did any of  
14 these witnesses tell them that they threatened Booth into  
15 signing a statement? That information was not put forward to  
16 the district attorney or the judge.

17 In fact, not only did the grand jury not know that  
18 Mr. Alston was getting a deal, the evidence is clear,  
19 unrefuted, that the district attorney's office actively misled  
20 the judge overseeing that proceeding. If you look at -- it's  
21 in evidence -- Exhibit 46, this is a sworn affirmation, an  
22 affidavit by the district attorney in the case --

23 MR. ZUCKERMAN: Objection, your Honor.

24 MR. JOSEPH: It's in evidence, Judge.

25 THE COURT: The object of these summations, Mr.

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1 Zuckerman, unless there is a tragic mistake, is it is the only  
2 time that either side has for a narrative so as to be able to  
3 give the jury an overview. So I look at objections extremely  
4 carefully and generally ignore them so that they can have the  
5 advantage of that narrative. If you think this is critical,  
6 I'll be glad to listen.

7 MR. ZUCKERMAN: Yes, your Honor. He's talking about  
8 what the DA -- an agreement that the DA entered into with  
9 Mr. Alston. We are not litigating the DA's role in this.

10 THE COURT: But it all comes from whatever your client  
11 gave her.

12 MR. ZUCKERMAN: This is an agreement that the DA  
13 entered into, the DA and Mr. Alston.

14 THE COURT: Is it in evidence, Mr. Zuckerman?

15 MR. ZUCKERMAN: Yes, it is in evidence.

16 THE COURT: Unlike, by the way, all I can find on P-2  
17 and Z-7, but I hope you will convince me to the contrary.

18 Go ahead, Mr. Joseph.

19 MR. JOSEPH: This is in evidence. You can look at it.  
20 It says, specifically, the Court directed the people, the  
21 district attorney's office, to provide additional information  
22 before it makes its determination regarding the defendants'  
23 motion to inspect and dismiss the indictment.

24 Specifically, the Court wanted to know whether an  
25 agreement had been reached between the people and a civilian

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1 witness who provided a direct nexus between the crime and the  
2 defendant. This is Alston.

3 What did she say? Exhibit No. 1. He agreed to work  
4 with Detective Parker in the investigation of unrelated  
5 narcotics cases. You heard Detective Parker. Didn't he tell  
6 you he wasn't working on any narcotics cases? Also, the  
7 agreement -- No. 3, the agreement was not made to ensure his  
8 testimony in this case.

9 Well, what did Ms. Scaccia testify to? That this  
10 witness was let out of jail specifically in exchange for  
11 testimony against this plaintiff. How can you have any  
12 confidence in what the district attorney did or this grand jury  
13 indictment when there has been active misrepresentation. It's  
14 clear as day.

15 Also, remember these defendants didn't tell the judge  
16 that Mr. Huello and Mr. Cobb had inconsistent statements, one  
17 contradicted the other. They both couldn't possibly be true.  
18 Instead, what he did is he concentrated on what Cobb said and  
19 ignored what Huello said.

20 Ladies and gentlemen, Detective Agostini initiated  
21 this prosecution, I don't think there is any question about it.  
22 And the other defendants played a distinct role that also  
23 caused this prosecution to go forward.

24 You heard that Mr. Abate was the lead detective when  
25 this case -- when this case first was reported. And even

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1 though he couldn't really get a straight answer from either  
2 Abate or Agostini on who actually arrested plaintiff, remember  
3 that? One says, oh, it happened after my tour, and then Abate  
4 said, it happened after I came on, when I got the case, and  
5 then Agostini said, no, no, it only came on after me. They  
6 both pointed the finger at each other. Neither one of them  
7 will give a straight answer.

8                   But we did get a straight answer from Lieutenant  
9 McGovern, who has no reason to want to help us. He's a police  
10 officer, he was their supervisor, and what he did he tell you?  
11 He told you that plaintiff was arrested or taken into custody  
12 at the scene. It was Detective Abate's decision to target this  
13 plaintiff.

14                   Also, you heard that Detective Abate filled out  
15 paperwork for a search warrant to get a search warrant on  
16 Anthony Manganiello's car, a search warrant, by the way, which  
17 was negative for any evidence that he was in any way involved  
18 in this crime. That also is part of commencing this  
19 proceeding. And what's interesting is, remember I asked  
20 Detective Abate. I said, sir, on February 12, 2001, what  
21 evidence was there? What evidence did you have that tied  
22 Anthony Manganiello to this crime?

23 "A. No."

24                   You need probable cause to get a search warrant. Did  
25 he tell the judge that there was no evidence tying Anthony

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1 Manganiello to the crime? Odds are unlikely. No judge in his  
2 right mind would issue a warrant if he sees there is no  
3 evidence, and we don't know what he said. Why? Search warrant  
4 applications and affidavits disappeared, so we will never know.  
5 Isn't that convenient? I submit to you, ladies and gentlemen,  
6 these acts by Mr. Abate also initiated this proceeding and  
7 caused it to go forward.

8 You also heard about what a grand jury is. A grand  
9 jury is a body of people who are supposed to look at the  
10 evidence and determine whether there is some reasonable cause.  
11 Ladies and gentlemen, I submit to you that Officers Nieves and  
12 Perez both gave false testimony, knowingly gave false testimony  
13 before this grand jury. That played a role in causing this  
14 prosecution to go forward.

15 I think there is no doubt that he lied. You see, you  
16 heard -- I am not going to go through their testimony again.  
17 It's been read over and over and over again. You know what  
18 they said. They both say, there was no transmission which in  
19 any way identified the security officer as a victim. Well,  
20 that's a little misleading, wasn't it? You heard Lieutenant  
21 Scott, who has no reason to want to help us. He said there  
22 was, in fact, a transmission identifying him as a Parkchester  
23 security guard.

24 Also, Ms. Nieves, on cross-examination both and at  
25 trial and here, finally admitted, he may have said Parkchester

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1 security guard. That wasn't her testimony before this grand  
2 jury. Her testimony was pretty clear. There was no  
3 transmission. He made this statement to me, he couldn't have  
4 known it, he had to be the shooter. That was certainly  
5 misleading.

6 If you look at Exhibit No. 11, which is also in  
7 evidence -- and remember, this is a document the defendants --  
8 not the defendants, but the police department created. I  
9 didn't create this document. This is a record, not from me,  
10 but an independent record. What does it say? Possible  
11 Parkchester security guard shot at location, last line.  
12 Ms. Nieves testified and Parker testified -- Perez testified,  
13 there was no transmission which in any way identified this  
14 victim as a Parkchester security guard. What does Exhibit 11  
15 say? Possible Parkchester security guard shot at location.

16 Ladies and gentlemen, I said we were going to come  
17 back to what they actually said, but misleading the grand jury  
18 and providing false testimony before a grand jury causes a  
19 prosecution to go forward. That's part of initiation and we  
20 satisfied this element. You've also heard that she put words  
21 in Anthony Manganiello's mouth that he never made. He told you  
22 he was there. He said it was a lie, that she never made that  
23 statement to her.

24 Do you know what's interesting? When she said this  
25 statement occurred, it's in the basement, right? Well, didn't

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1       her own partner, Officer Perez, tell you when Manganiello comes  
2       on the scene she is already outside the basement. According to  
3       her own partner, this statement couldn't have happened,  
4       couldn't have happened. Even her own partner doesn't back her  
5       up on this one.

6           This was -- doesn't matter what evidence you hear  
7       before the grand jury. If it's a lie and the defendants are  
8       knowingly putting forth lies, it doesn't create probable cause.  
9       And if they misrepresented, mislead the grand jury, there is no  
10      presumption that there is probable cause. Junk in, junk out.

11           You also heard about Mr. Martinez, and we know he  
12      fabricated some evidence to the grand jury. You remember  
13      Booth's statement. You remember the statement of Mr. Booth.  
14      You remember Mr. Booth? Mr. Agostini told you that at first he  
15      doesn't know anything about this. We bring him in, we search  
16      him, we find in his deposition he knew there were gambling  
17      slips, but now he doesn't know what gambling slips are.

18           Then, all of a sudden after they find a knife, after  
19      they find evidence of the criminal activity, the guy signs a  
20      statement against Anthony Manganiello, which he didn't know  
21      about before, and he walked out of the precinct. No charges.  
22      They even give him back the knife. These false statements  
23      against Anthony Manganiello were forwarded to the district  
24      attorney.

25           Mr. Booth testified at trial. This also caused this

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1 prosecution to go forward. Isn't it convenient that  
2 Mr. Martinez now has no memory of these events at all? He has  
3 no memory. He has developed amnesia. Isn't that also  
4 convenient? But what's not convenient is his signature is on  
5 these documents.

6 It's Exhibit 41 in evidence. Martinez and Martinez.  
7 And these are the two statements. Remember? They are written  
8 ten minutes apart. The one that's dated earlier by  
9 Mr. Martinez has Mr. Manganiello's correct name, correct  
10 spelling of his name. It has no spelling errors, it's written  
11 out perfectly. But the one which they admit -- which they say  
12 came later, it's Minganiello, spells the gun G-u-n-n, and there  
13 is all sorts of spelling errors, grammatical reports in this  
14 one. Ladies and gentlemen, I suggest to you, Mr. Martinez  
15 helped him write the statement, and he knew it was not true at  
16 the time that he did it. He forwarded this to the district  
17 attorney and that in part caused this prosecution to go  
18 forward.

19 When we talk about this, I think it's reprehensible.  
20 They gave this guy, who they know is a bookie, they know he's a  
21 loan shark, they gave him a free pass. You heard in his  
22 statement against plaintiff, he is never arrested, never  
23 investigated. He's out there running a criminal enterprise,  
24 criminal business. We have cops fabricating evidence, forcing  
25 criminals to lie about other cops. It's outrageous what

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1       happened here. This was no good-faith investigation.

2           I also have to talk to you about probable cause and  
3       malice. I think when you take a real close look at this  
4       evidence, there is really no probable cause at all to believe  
5       Anthony Manganiello shot and killed Albert Acosta.

6           Well, remember I asked Mr. Abate and Mr. Agostini,  
7       sir, what evidence on February 12, 2001 connected him to this  
8       crime? Both their answers was none. Remember that? On  
9       February 12, 2001, they were aware of whatever it was that  
10      Mr. Cobb had to say, that did not connect Anthony Manganiello  
11      to the crime of this murder on February 12, 2001.

12           The question becomes, how did it later connect it to  
13       this crime? What happened in between? Well, it's also  
14       undisputed, when we talk about malice, they arrested Anthony  
15       Manganiello even though they had no probable cause. A district  
16       attorney told him they had no probable cause, the DD5 in  
17       evidence. And what happens, even though they can't hold him  
18       that night, he has to sit in jail until 5:00 the next morning.  
19       Doesn't that show some malice, some anger, some resentment?

20           Look at the evidence. Let's see. No witness saw  
21       Anthony Manganiello kill Albert Acosta. Nobody saw anybody  
22       kill Acosta. There was no weapon which tied Manganiello to  
23       this crime. There was no gunshot residue. There was a  
24       negative gunshot residue test within hours performed on his  
25       hands and clothing. They searched his car. They even X-rayed

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1 it. Negative results.

2 What was it that tied Anthony Manganiello to this  
3 crime on February 12, 2001? The answer is nothing.

4 In fact, when you take a closer look at the evidence,  
5 you heard that Anthony Manganiello was with two police officers  
6 on the morning of February 12, 2001. Could you ask for a  
7 better alibi than being with two police officers? You heard  
8 from Mr. Rodriguez's -- Officer Rodriguez's memo book. He  
9 doesn't remember the incident, but he writes down he was at the  
10 call from, I think it was 8:35 to 9:04.

11 And what does he say? Exhibit No. 6. On February 12,  
12 2001, what does he say? Officer Rodriguez and Officer Ortiz,  
13 assigned to the 43rd, responded to a dispute with a knife.  
14 They responded. Sergeant Rose of the 43rd was there, no knife  
15 involved. Things calmed down. Officer Manganiello responded,  
16 seems normal.

17 When they complete it, they all left and the  
18 Parkchester cop left. Only one Parkchester cop showed up this  
19 to this call. Anthony Manganiello left 1700 Metropolitan  
20 Avenue with two police officers. They know this. This is not  
21 something we are pulling out of thin air. These are records  
22 and notes from their own file.

23 But then you also are going to hear -- you heard  
24 Mr. Manganiello kept a memo book where he wrote down times and  
25 places and where he was. And you also heard that he issued a

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1       summons shortly after he left the building. You heard not only  
2       did he issue a summons, he saw some garbage, he went through  
3       the garbage and took out evidence, a letter addressed to  
4       somebody to document whose garbage it was and he put it in his  
5       memo book.

6           And what happened? After he gets to the 43rd, these  
7       papers and his memo book are never seen again. The evidence  
8       that would establish where Anthony Manganiello was goes  
9       missing. Is that a coincidence? Is it a coincidence that  
10       every piece of written material, handwritten material, except  
11       for Mr. Booth's statement apparently, have gone missing.

12           You heard what Lieutenant Scott and Mr. McGovern  
13       testified to. They have very strict procedures at the 43rd  
14       Precinct concerning what happens to case files. They are  
15       indexed by year, they are put in a cabinet or storage room.  
16       And whenever a detective leaves the 43rd Precinct, it's his  
17       responsibility to make sure it's put in the location where it's  
18       supposed to be so it could be found later. This is the only  
19       case file that's ever disappeared in Detective Agostini's  
20       career.

21           Is it a coincidence that this evidence, this memo  
22       book, which has -- which documents where he was disappeared?  
23       Think about it also that they have a vouchering system. Was  
24       this memo book ever vouchered in the three years between  
25       Anthony Manganiello was arrested and the time it went to trial?

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1 Why wasn't this evidence vouchered? Because they didn't want  
2 it to come to light. That's why. Because if this came to  
3 light, it contradicted what they were saying. That's why.

4 Is it also a coincidence that every handwritten note  
5 that Mr. Agostini created when he interviewed the tenants of  
6 apartment 5E disappeared? And the notes he did create say  
7 nothing about him being at 5E. Is that a coincidence? And  
8 take a look at Exhibit 36. We didn't talk about it much, but  
9 it didn't have any -- what does it say? It's a DD5 by David  
10 Brewer. It says that on or about -- he went to his post to  
11 have breakfast -- he went to have breakfast with Albert Acosta  
12 at 8:15 a.m. They bought breakfast, went to the roof at 1522  
13 Union Port Road to eat breakfast.

14 The first thing Mr. Acosta does when he goes on tour,  
15 he goes and gets breakfast and he goes up to the roof to eat  
16 with an Officer Brewer. And then a job came over for 1700  
17 Metropolitan Avenue, apartment 5E, and Acosta was assigned to  
18 backup. But we know from Exhibit 6, Acosta never made it  
19 there. At the point in time Acosta arrives, Anthony  
20 Manganiello was already with two uniformed police officers.  
21 God knows what happened to Mr. Acosta in the basement. But you  
22 know that Anthony Manganiello wasn't there.

23 Remember the DD5 from Sergeant Rose, and even Exhibit  
24 6. They say only one Parkchester cop made it to the call and  
25 it was Anthony Manganiello. Somewhere in route to that call

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1 something happened to Mr. Acosta, and Mr. Manganiello was  
2 already with two cops.

3 We also have Exhibit No. 2, which is Mr. Grimes'  
4 statement which says, outside the basement door, about 9:20 or  
5 so, he's drinking a cup of coffee and you know what, he hears  
6 no shots. You also had a DD5 which is in evidence as Exhibit 4  
7 that Mr. Huello arrived some time around 9:20 and when he gets  
8 inside the basement he hears a radio inside the basement. He  
9 bangs on the door and there is no response. Whatever happens  
10 to Mr. Acosta happened to him before Mr. Huello came on the  
11 scene. That's the simple answer.

12 And he's also on the scene at 9:20 something. When  
13 Mr. Cobb says he comes onto the scene at 10 something, hears  
14 shots, we know it's not true because Mr. Huello was there at  
15 9:20 working in the room. And we have a diagram which is in  
16 evidence. This is Mr. Martinez's drawings. Look where the  
17 victim is, look where Mr. Huello is. I submit to you, ladies  
18 and gentlemen, if there were gunshots, Mr. Huello would have  
19 heard them. But there is no gunshots after 9:20. What do we  
20 know? We know Mr. Cobb is either fudging his story a little to  
21 help the police, or he's crazy, one of the two.

22 I think when you look at this evidence, ladies and  
23 gentlemen, only, the only conclusion that you can really draw  
24 is that Anthony Manganiello was with two police officers when  
25 this incident happened. Remember, Ms. Scaccia told you that

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1 Mr. Manganiello requested at trial that these officers testify  
2 and they couldn't find them. You heard from Officer Rodriguez  
3 here.

4 Also, if you look at Exhibit 4, not only does  
5 Mr. Huello say he doesn't hear shots, he says he doesn't see  
6 Anthony Manganiello at all the entire time he's in the  
7 basement. He sees Cobb come in and he can hear him say hello.  
8 I submit to you, if you can hear someone say hello, you can  
9 hear four gunshots if they go off. But Mr. Huello doesn't hear  
10 that.

11 We talked a lot -- they put up Mr. Cobb's grand jury  
12 and some of Mr. Cobb's DD5. Here is what they didn't tell you.  
13 You remember when Mr. Scott testified. He said while he was at  
14 the scene, nobody knew who it was that Mr. Cobb saw in the  
15 building. On February 12, 2001, nobody knows who Mr. Cobb sees  
16 in the building. But later on that day we have typed DD5s  
17 saying it was Anthony Manganiello. And also all the initial  
18 interview notes of Mr. Cobb, they just seemed to have sprout  
19 legs and walked out of the police station. Is that also  
20 coincidental?

21 And you heard an ADA testify that a criminal defendant  
22 has a right to confront the people who are testifying against  
23 him. He has an absolute right to have every statement they  
24 made so he can present it to them and cross-examine them. Did  
25 Mr. Manganiello have that right? Did he have that opportunity?

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1 Even though he did, he was still found not guilty.

2 Also, ladies and gentlemen, take a look at Exhibit No.

3 5. I believe the defendants made a big blowup of it. It's  
4 Officer Perez's statement. Officer Perez has been on the job  
5 for a long time, right. And she knows to give a full complete  
6 statement. Mr. Martinez knows it's important to document what  
7 happens.

8 Exhibit No. 5. This is what -- on February 12, 2001,  
9 at 2000 hours, which is about 8:00 at night, Mr. Martinez  
10 speaks with Officer Perez, and what happens? This is all it  
11 says: We did a small canvass, spoke to the maintenance guy,  
12 Cobb, who heard shots. Nothing about Anthony Manganiello being  
13 there at all.

14 On February 12, 2001, there is no mention of Anthony  
15 Manganiello being there by Mr. Cobb, according to Officer  
16 Perez. Isn't this a little suspicious, that all these DD5s now  
17 pop up and this grand jury testimony has all these details  
18 about Anthony Manganiello coming and blasting out of the  
19 basement when the fact of the matter is, it wasn't said on  
20 February 12, 2001.

21 Isn't it kind of an important fact to leave out?  
22 Isn't it also a coincidence that whatever notes these  
23 detectives took of Officer Perez's statement that he made later  
24 have disappeared?

25 Remember, Officer Perez told you that Ms. Nieves was

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1 also there on February 12, 2001 being interviewed. Does  
2 Ms. Nieves say anything on February 12, 2001 about plaintiff  
3 saying, hey, that's my partner in there? No, she doesn't, does  
4 she. Is there a single DD5 anywhere that documents that  
5 conversation on February 12, 2001? Doesn't say it on February  
6 12, doesn't say it on February 13, 14, 15, 16, 17, 18, 19, 20,  
7 up until March 1.

8 Who does she speak with on March 1? Lo and behold,  
9 Detective Agostini. That's when the statements of his end.  
10 Not a single handwritten note, not a single DD5 for two and a  
11 half weeks. Remember, by this time, Mr. Agostini was already  
12 told that he couldn't prosecute Anthony Manganiello.

13 I suggest when you take a close look at the evidence  
14 here, what it suggests to you, the only conclusion you can  
15 really draw, is that evidence didn't lead to a suspect. They  
16 picked the suspect and massaged the evidence towards that  
17 particular suspect. I think when you take a close look as we  
18 go through this evidence you're going to hear over and over,  
19 they are trying to put square pegs into round holes. It  
20 doesn't fit now, it didn't if it then, and Anthony Manganiello  
21 should never have been charged with murder. There is simply no  
22 evidence that he was any way involved in this particular crime.

23 We have what Mr. Cobb has to say and so did these  
24 defendants and presumably so did the district attorney on  
25 February 12, 2001. But you know what, on February 12, 2001,

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1 the ADA says we don't have probable cause. So whatever Cobb  
2 says really, it doesn't create probable cause.

3 And when we go through the evidence, I think you can  
4 draw the conclusion that every contact these defendants had,  
5 especially Abate and Agostini, with Anthony Manganiello,  
6 evidence is malice. He knew there was no evidence. They  
7 arrest him on February 12, 2001, even though he can't get a  
8 clear answer on who actually did it.

9 And if you look at the way this investigation  
10 proceeded, I suggest to you whoever had the bad luck to be  
11 signed up or partnered up with Albert Acosta, God rest his  
12 soul, may his soul rest in peace, would have been the suspect  
13 that day, whether it was Anthony Manganiello or any other  
14 security guard. But they didn't look at the evidence. They  
15 just picked out the partner and massaged the evidence to the  
16 conclusion they wanted to draw.

17 You heard when Mr. Agostini was told that he couldn't  
18 prosecute or arrest Anthony Manganiello on February 12, 2001,  
19 he got upset. He got very angry. He got angry when plaintiff  
20 told him -- he interviews the plaintiff. Plaintiff is  
21 cooperating. He tells you, I told them name, I told them my  
22 address, I told them my phone number, I told them about other  
23 people who had problems with Mr. Acosta. But those handwritten  
24 notes, again, just disappeared. Isn't that coincidence?

25 But we know that Mr. Agostini fills out an arrest

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1 report, and where does he get the information from for address,  
2 phone number, pedigree? From Anthony Manganiello. Is it  
3 really believable that Anthony Manganiello doesn't give him his  
4 address, but then it winds up on the arrest report, same day,  
5 and the arrest report again just disappears. Does that --  
6 you're all intelligent people. Does it strike you as  
7 believable, the story that these people are offering you. Does  
8 it gibe with your common sense. I suggest, ladies and  
9 gentlemen, it doesn't.

10 . And then they have to come up with something, so what  
11 do they say? They say that Anthony Manganiello is evasive.  
12 You heard Anthony tell you, and he testified at trial, was this  
13 credibility impeached at all? Was he caught lying at all? I  
14 suggest to you he testified to you in a straightforward and  
15 forthright manner as to what happened that day. When you  
16 compare that with the defendants, who have been in caught lie  
17 after lie after lie, the story keeps shifting. Every point in  
18 time he testified, the story comes out differently. The only  
19 thing that's been consistent with these defendants' stories is  
20 that it's consistently inconsistent.

21 Ladies and gentlemen, when Mr. Agostini created that  
22 DD5, which defendants blew up and put up in front of you, if  
23 that's untrue, he forwards it to the district attorney's office  
24 as part of initiating the prosecution. That's part of malice,  
25 misrepresenting what happened and giving it to a prosecutor.

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1 It's outrageous.

2 You heard that when -- Anthony Manganiello is in an  
3 interview room and he's helping. He's saying yes, there was an  
4 event, there was an event where some Blood gang members --  
5 remember, Terrence Alston is also a Blood gang member -- threw  
6 Mr. Acosta through a plate glass window. There is also another  
7 incident where some local thugs had threatened to shoot him.  
8 Did they investigate either of these incidents? They don't, do  
9 they. Do little bells go off when Terrence Alston, who happens  
10 to be a Blood gang member, comes forward and says, yeah, I know  
11 something about this, the shooting, and Terrence Alston happens  
12 to be in jail and has been there for many, many months. And  
13 Anthony Manganiello says, yeah, some Blood gang members threw  
14 Albert Acosta through a glass plate window. Shouldn't little  
15 bells go off? Is this really a thorough and good-faith  
16 investigation that the defendants would have you believe they  
17 conducted?

18 Anyway, going back to the interview, Mr. Manganiello  
19 said they are interviewing him -- and, remember, this gentleman  
20 is still in a state of shock. He has just seen a coworker shot  
21 a few minutes earlier. He is actually having shortness of  
22 breath. They don't let him go to the hospital. He was at that  
23 call. This just as easily could have been him. Then they flat  
24 out accuse him of shooting the guy? And he says, what, are you  
25 fucking crazy? I had nothing to do with this.

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1                   Then what happens. Then they get mad, very mad. They  
2 start ripping his clothes off, ripping his clothes off, taking  
3 his memo book, taking his keys, ripping a Band-Aid off his  
4 hand. I think, ladies and gentlemen, when you look at that,  
5 that is evidence of malice. Whatever happened in that room  
6 infuriated Mr. Agostini and Mr. Abate. That's when these  
7 events started to occur. You hear that when Mr. Agostini is  
8 told that he can't charge Anthony Manganiello, what happens?  
9 Opens the cell door, after holding him for several hours, and  
10 says leave. And as he's trying to put on his shoes, he starts  
11 pushing him and says, get out of my fucking station house. Is  
12 that professional? Is that what a police officer should do?

13                   Ladies and gentlemen, if you're not free from this  
14 kind of kind of harassment in a police station, where are you  
15 free from it? A police station is supposed to be a place of  
16 safety. Yet, we have two detectives pushing someone out the  
17 door and cursing at him. Doesn't this show a little bit of  
18 their state of mind? Remember, they both testified at trial.  
19 Did either one of them deny it happened? They didn't, do they?

20                   Then what happened? Anthony Manganiello's brother,  
21 Mario Manganiello, comes, gets a phone call from somebody,  
22 appears at the station, and sees his brother sitting there in a  
23 chair, in a T-shirt with electrodes hooked to his chest. Of  
24 course, he calls a lawyer. Who wouldn't if a family member is  
25 sitting there in that condition. Isn't that what's going

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1 through his mind, seeing his brother in this condition?

2 You hear Mr. Ross shows up and now the defendants, all  
3 of a sudden, they are even more suspicious because he gets a  
4 lawyer to stop their abuse. This wasn't a prosecution based on  
5 evidence. There was no evidence. There was supposition. They  
6 determined that they got angry with this particular plaintiff  
7 because they didn't like how he responded to that question, and  
8 he gets a lawyer. Now, all of a sudden, they assume he's  
9 guilty and they are going to do whatever they have to do to get  
10 him. That's what happened here. I don't think there is any  
11 doubt about that.

12 You heard when Anthony Manganiello was placed in the  
13 cell, he doesn't have any clothes because they took his clothes  
14 from him. He says, can I have something to wear? They laugh  
15 at him. Yeah, right, we'll give you something to wear. Isn't  
16 that evidence of malice, isn't that evidence of dislike or  
17 anger toward somebody?

18 What do we know? We know on February 12, 2001, there  
19 was no evidence whatsoever that connected Anthony Manganiello  
20 to this crime. We know that Abate and Agostini don't like  
21 Anthony Manganiello, and they seem to have an agenda. They  
22 tried to stick him any way they could and that's been shown  
23 during the course of Anthony Manganiello's testimony.

24 Then, February 12, 2001 passes, he's released, and  
25 then things start to get very strange. Take a look at Exhibit

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1 29, which Mr. Agostini created. On February 12, 2001, Luis  
2 Agostini interviews Officers Ortiz and Rodriguez. And what  
3 does he say? They did not see SPO Manganiello leave the  
4 building. Well, can't be further from the truth from what  
5 Mr. Martinez says happened on February 12, 2001. If you  
6 compare Exhibit 29 and Exhibit 26, they both can't be true.

7 Why, on February 12, 2001, did these two officers,  
8 Ortiz and Rodriguez, say that Anthony Manganiello left the  
9 building with him? Why, two and a half weeks later, after  
10 Mr. Agostini is told he doesn't have probable cause to charge  
11 Anthony, does this particular document surface, which is 180  
12 degrees from what these officers said on the day in question.

13 Why? Because now this document puts Anthony  
14 Manganiello on his own in the building at 1700 Metropolitan  
15 Avenue at about the time you know that Albert Acosta was killed  
16 when, in fact, he was with Ortiz and Rodriguez. There is no  
17 good-faith explanation for this. There really isn't. This was  
18 forwarded to a prosecutor for one particular reason, to get  
19 Anthony Manganiello, even though they knew he was innocent.

20 Defense counsel would have you believe that they did  
21 this complete and thorough investigation, hundreds of people  
22 canvassed. Well, do any of these canvasses lead to anything  
23 that tied Anthony Manganiello to the crime? No, it didn't.  
24 Well, what happened? We heard about this DD5, that there is a  
25 Cynthia Taylor arrested a couple of weeks after the murder in

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1 Parkchester with a .22 caliber gun, same caliber murder weapon  
2 as was used to kill Albert Acosta. Where are the ballistics,  
3 where are the lab results of this .22 caliber gun? Missing.  
4 The .22 caliber gun, same caliber, same complex, within a  
5 couple of weeks, and they don't even look into it. Is this a  
6 thorough and good-faith investigation, or did they already have  
7 their suspect, so they ignored everything else.

8 You also heard that they found somebody, this guy is  
9 talking in a cab -- it's in the DD5s, also -- that says on a  
10 cell phone he was there when a security officer got shot, he  
11 was there. But then they bring him in, he gives them some  
12 story, he just made it up, and they let him go without doing  
13 any further investigation. They didn't look at this guy's  
14 fingerprints. They didn't look at anything. They accepted his  
15 story and let him walk out of the door. Why? Because they  
16 already had their suspect.

17 This wasn't a thorough, good-faith investigation.  
18 They focused on Mr. Manganiello and ignored everything else.  
19 They ignored exculpatory evidence, they didn't make material  
20 statements of fact. They fabricated evidence to get this guy,  
21 and they ignored evidence showing that other people were likely  
22 responsible for this crime, including the Blood gang members  
23 whose threw this guy through a plate glass window, including  
24 Ms. Taylor, who possesses a .22 caliber gun in the same complex  
25 wherever the murder happened, less than a month after the fact.

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1 They ignore the guy who says that I was there, but then changes  
2 his story when they speak to him. Doesn't this sound a little  
3 strange to you, that these leads would be ignored? Did they  
4 exhaust every potential lead, like defendants would have you  
5 believe? I suggest, ladies and gentlemen, they did not, they  
6 absolutely did not.

7 You know, another thing, remember how Mr. Agostini  
8 keeps telling you, I gave my whole file, I gave them everything  
9 they wanted, wow. Four years ago he said the exact opposite in  
10 his hearing testimony. You remember that? He only gave the  
11 DD5 vouchers, nothing else.

12 What do you do with a defendant that says one thing  
13 four years ago and then tells you, 180 degrees, the exact  
14 opposite here at trial. Is that believable to you?

15 Is it believable when he says he gave that district  
16 attorney his entire file, every piece of paper in it to be  
17 copied, but Ms. Scaccia, four years ago, at a hearing, likewise  
18 represented to the Court and told the judge, I never had  
19 possession of it. I never, never had possession of it. Is  
20 that consistent? I suggest to you, ladies and gentlemen, it  
21 isn't.

22 You are also going to see in evidence Exhibit No. 17,  
23 which is dated -- which is the request for -- request to  
24 intelligence, which is Mr. Parker's division, and it comes up  
25 with a date or two of February 12, 2001 and negative results

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1 when it comes back, but a day or two later, that's when  
2 Mr. Alston comes up.

3 And Agostini knows he's a liar. There is no question  
4 about that at this point, is there? He knows he's making up  
5 stories to get out of jail and he doesn't care what he has to  
6 say, so long as he gets Anthony Manganiello. You heard  
7 Mr. Parker, who is his handler. Mr. Parker spoke with him,  
8 with Mr. Alston, for an hour, spoke with him for an hour about  
9 what information he had. And at no time during this hour did  
10 he mention that Anthony Manganiello tried to hide the killing  
11 of another security guard. Do you find that a little strange?  
12 His own handler he doesn't tell. But the story emerges after  
13 he speaks with detectives from the 43rd Precinct.

14 What's even more unusual, remember I asked Detective  
15 Agostini, did Mr. Alston ever tell you another security guard  
16 hired me -- did Mr. Alston tell you that Anthony Manganiello  
17 tried to hire him to kill another security guard? He says no,  
18 he never made that statement to me. It's in his testimony.  
19 You can look at it. But what's interesting is, if you look at  
20 his DD5, which is also in evidence, that's exactly what's in  
21 the statement that Mr. Agostini signs. Alston doesn't tell him  
22 this, but it is in the DD5 that Agostini signs.

23 What happened here? And defendants can put any  
24 exhibit up on the board they like. If it's a lie, it's not  
25 true and they know it's not true, it doesn't create probable

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1 cause to believe that Anthony Manganiello killed anybody.

2 Remember, Mr. Alston is in jail on February 12, 2001.  
3 He's been there for quite a long time. How is it that he knows  
4 anything about a murder in Parkchester that occurs while he's  
5 in jail, unless somebody is feeding him information? Remember,  
6 Mr. Alston is a Blood gang member, a gang member. You heard  
7 Mr. Agostini tell you that Blood gang members don't like the  
8 police, they don't cooperate with the police. How is it that  
9 this gentleman, all of a sudden, is coming forward, testifying  
10 against not a criminal, but a cop, a security guard. Shouldn't  
11 a little bell be going off here?

12 Remember, Mr. Agostini told you that Mr. Johnny Baker  
13 sold him a gun, sold Anthony Manganiello a gun, a .22 caliber,  
14 same weapon used in this murder. But then Mr. Agostini  
15 interviews Mr. Baker and what happens? Johnny states, Exhibit  
16 No. 10, he has no knowledge of selling a firearm to a security  
17 guard. Johnny Baker's name comes from Detective Agostini and  
18 Mr. Baker says, I know nothing about it. Even more  
19 importantly, Mr. Baker, Johnny Baker wrote out a statement on  
20 his behalf, see attached. Statement disappeared. Is that also  
21 coincidence?

22 Now, remember, Mr. Agostini told you that he believed  
23 Johnny Baker. He thought he was telling the truth. He was  
24 credible. What does that mean? That means that Terrence  
25 Alston tried to implicate two people for crimes he knew he

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1 didn't commit. He tried to implicate Johnny Baker for selling  
2 a gun, and he knew at this point that he lied about that. He  
3 tried to falsely implicate plaintiff for buying a gun of the  
4 exact same caliber. And what happens, he knows now it's a lie  
5 and this is long before this information is passed through the  
6 DA, long before Mr. Alston testifies before the grand jury.

7 You heard Mr. Agostini tell you that if a confidential  
8 informant lies or gives bad information, you're supposed to  
9 drop him, no questions asked. Did they drop him? In fact,  
10 they say, no. They come up with a story, that was just the  
11 wrong guy. It was a lie. It was a lie. This case went  
12 forward against Anthony Manganiello based on lies and they knew  
13 it.

14 Not only did he lie, he says, oh, now he's going to  
15 get me the real guy, this other guy, Mark Damon, who is 17  
16 years old. But wait. Get me out of jail first, and they do.  
17 Get me out of jail and in four weeks I'll get you another  
18 witness.

19 Then what happens? Some time later he gets out of  
20 jail. Mark Damon, 17 years old, shows up and says the exact  
21 same story as Johnny Baker. And even more suspicious,  
22 Mr. Alston doesn't want Agostini speaking to witnesses he  
23 produces. Don't you find that odd? Don't you find it odd that  
24 now, all of a sudden, Mr. Agostini, who is his lead  
25 investigator, goes to the DA's office, this witness comes out

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1 of nowhere, out of the woodwork, and he doesn't ask him any  
2 questions? Why? Because Terrence Alston doesn't want him to.

3                   Ladies and gentlemen, doesn't this smell dirty?  
4 Doesn't this appear that Terrence Alston is supporting perjury  
5 to get out of jail? Is there any doubt that that is the only  
6 conclusion you could draw here? But they don't care. They let  
7 it go forward. They present this evidence to the DA, they put  
8 him into this grand jury room, even though he's lying. Doesn't  
9 matter what testimony they put up on this board. Terrence  
10 Alston said, they know it's a lie. That's what's important  
11 here. And how heinous is it?

12                  He said that Johnny Baker -- that Anthony Manganiello  
13 wanted this guy dead because he was messing with a girl. Well,  
14 they interviewed Mr. Acosta's girlfriend, and she says, there  
15 is no problem here, I don't know what you're talking about.  
16 Shouldn't be bells going off? This guy is not telling us the  
17 truth.

18                  Yet, what do they do? They reward him. He doesn't  
19 just let him -- Agostini doesn't just let Alston sit in jail.  
20 He brings him to the DA to say this guy has got good  
21 information. He vouches for him. They give him a deal, let  
22 him walk right out of a jail cell in exchange for falsely  
23 implicating Anthony Manganiello. You have cops making deals  
24 with criminals to falsely implicate other cops. That's  
25 malicious prosecution.

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1                   What is also important here is that Mr. Agostini, he  
2 doesn't make a record of what happened here. He doesn't make a  
3 record that Mr. Alston said, hey, don't interview my witnesses.  
4 He doesn't make any written records saying that Mr. Alston was  
5 playing games to get out of jail. Why? Because  
6 Mr. Manganiello's defense lawyers would get it if he did. So  
7 he makes no written record and no disclosure about it.

8                   Remember the DA said, did Mr. Agostini tell you that  
9 Mr. Alston was playing games to get out of jail? No, I don't  
10 remember that. Did he tell you that he didn't want witnesses  
11 he was producing interviewed? He didn't tell the DA that  
12 either. Ladies and gentlemen, I submit to you that on some  
13 very, very important facts concerning Mr. Alston, Agostini left  
14 the district attorney in the dark. He did not make a full and  
15 complete disclosure like he should have.

16                   Even worse, Alston was fed details about a homicide  
17 that he couldn't possibly know. If you look at his initial  
18 statement, he's got some sort of general information. Then if  
19 you look at his grand jury testimony, he's giving the address  
20 of 1700. What happened between that first interview and the  
21 grand jury testimony? He was fed information that he couldn't  
22 have otherwise known. It's outrageous.

23                   Now, defendants want you to believe that these people,  
24 these citizens of Bronx County looked independently at this  
25 evidence and decided that there was probable cause because they

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1 voted to indict. Well, do you have any faith or confidence in  
2 a grand jury indictment when it's been based on nothing but  
3 lies?

4 If you look at the grand jury minutes, like I'm sure  
5 you will, you'll see that Alston is the only person who really  
6 connects Anthony Manganiello to this murder. You will see that  
7 Nieves and Perez also marginally try to connect him, although  
8 all these three are lies.

9 Even Chris Tartone who, incidentally, seems to be some  
10 kind of business associate of Booth's, how is it that Tartone  
11 knows that he's going to be at that pizzeria on Thursday at a  
12 specific time unless he's involved with these operations.

13 You heard Anthony Manganiello say, I never -- I don't  
14 know these people. How is it -- imagine what it's like being a  
15 criminal defendant and, all of a sudden, people you have never  
16 spoken to, heard of, are coming forward with these stories  
17 implicating you falsely of murder. It's unbelievable. He  
18 doesn't know Mark Damon. He couldn't pick Mark Damon out of a  
19 room. He doesn't know Terrence Alston. He couldn't pick  
20 Terrence Alston out of a room. Tartone is also -- same thing  
21 with Booth. He never spoke to Booth or asked him for a gun.  
22 It's outrageous. Even with Tartone, he didn't make the  
23 statement in the pizzeria. Even if he did, Mr. Manganiello is  
24 a cop, he's allowed to carry guns, he's required to carry guns.

25 If he's looking through a gun book and talking about

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1 buying a gun, how do we know it's not for his occupation?  
2 That's like accusing a chef of a stabbing after he talks about  
3 buying a carving knife. It's ridiculous.

4 Even the district attorney, you see in her affidavit,  
5 she misrepresented to this court. Hello, what deal was made  
6 with Alston? Is there any doubt that based -- you have  
7 Ms. Scaccia telling you, he was let out because he was  
8 testifying against plaintiff. But then you have this exhibit  
9 by Ms. D'Andrea, no, it has no relationship, it has nothing to  
10 do with this case, unrelated narcotics.

11 The story is the complete opposite. How can you have  
12 anything at all that this grand jury indictment was really  
13 based on probable cause? The answer is, you can't. The answer  
14 is, there was no probable cause. If there was probable cause  
15 in this case, why did defendants go to such lengths to  
16 manipulate the evidence? Why did they go so far to try and  
17 create probable cause?

18 You heard Mr. Agostini testify at trial and he says --  
19 it's in the testimony -- he testified at a pretrial hearing.  
20 He found a note in Anthony Manganiello's locker that says, I  
21 feel like killing somebody. Pretty damning, right? Until you  
22 actually look at the note, which is in evidence as Exhibit 16.  
23 Here it is. Plaintiff's Exhibit 16. This is the note that  
24 Detective Agostini testified to at trial without actually  
25 producing. What does it say? Does it say, I feel like killing

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1 somebody? I pray every day that I will never have to kill  
2 somebody. Couldn't be further from the truth what this  
3 defendant testified to at a pretrial hearing.

4 You also heard that Mr. Agostini testified at a  
5 pretrial hearing that Richard Ross, who is now deceased, came  
6 out of the interview room with -- after speaking to Anthony,  
7 and says -- goes up to him and says, was it intentional,  
8 meaning intentional discharge? The only problem was, it didn't  
9 happen, it never happened.

10 You heard Mario Manganiello, plaintiff's brother,  
11 testify that he was there when Mr. Ross came out of that  
12 interview room. You know what, he didn't make that statement.  
13 And remember, Mario Manganiello's testimony was not impeached  
14 in any way. There was no showing that he was being untruthful  
15 in any way, shape, or form. Remember, also, that even if  
16 Mr. Abate -- was there any statement made by this attorney  
17 after he came out of the interview room? Not that I remember.  
18 Even Mr. Agostini's own partner, Mr. Abate, doesn't back him up  
19 on the story.

20 Then what's interesting is shortly after they find out  
21 that Agostini is lying, that's when Mr. Booth comes into the  
22 picture. We can take a look at Exhibit No. 41. Again, even  
23 though Mr. Martinez had no memory of this event whatsoever,  
24 it's right here. Remember Mr. Agostini told you that at first  
25 he doesn't know anything. Then Agostini says, I heard you --

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1 someone approached you, a guy named Anthony Manganiello  
2 approached you about buying a gun. No, I don't know anything.  
3 Let me search you. They find this criminal activity evidence.  
4 They say, well, you don't know anything? You know what, maybe  
5 this stuff will find its way into the organized crime division.  
6 He doesn't deny he said that.

7 Then, all of a sudden, what happens is, the statement  
8 emerges, which Mr. Martinez signs as a witness. Isn't it  
9 coincidental that Mr. Martinez, a level guy, can't remember  
10 anything about this meeting, can't remember anything. Sir, was  
11 Mr. Booth threatened? I don't know. I don't remember.

12 THE COURT: You have five minutes.

13 MR. JOSEPH: Ladies and gentlemen, when you look at  
14 this testimony, none of this stuff makes sense. The only --  
15 you have cops hiring or engaging with criminals to fabricate  
16 evidence against other cops. When you look at this -- when you  
17 look at the real evidence, there was no probable cause to  
18 suspect Anthony Manganiello was in any way involved in the  
19 shooting of Albert Acosta. If there was, why did they have to  
20 manufacture it?

21 You heard about this guy Langhorn, this guy Plaza,  
22 they just throw in some documents. Neither one of these guys  
23 testified before the grand jury. Neither one of these guys  
24 testified at trial. If these statements were accurate, don't  
25 you think a district attorney would have presented that

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1 evidence? But she didn't.

2 Also, you're going to hear that this prosecution  
3 damaged Anthony Manganiello tremendously. You're going to hear  
4 that he was thrown in jail for ten days. What's it like for a  
5 cop being in Rikers Island? It's like being a sitting duck in  
6 a shark tank. I will submit to you, those were ten of the  
7 longest days in Mr. Manganiello's life.

8 You heard Dr. Latif testify that Mr. Manganiello is  
9 severely damaged because of what happened to him. Can you  
10 imagine the stress of sitting through three years waiting to  
11 see if you're going to spend the rest of your life in jail for  
12 a crime you didn't commit? What does that do to somebody?  
13 Something like this, where evidence has been made up against  
14 you by the people who are supposed to be guardians of our  
15 community and guardians of our safety, how do you have faith in  
16 life again? How do you have faith in anything again?

17 You heard that his career is destroyed, ladies and  
18 gentlemen. Even though he was found not guilty, he's got a  
19 record. Who is going to hire him at this point to do any kind  
20 of security even if he could physically do the work? Even if  
21 he looks for other work, how does he explain how he's been out  
22 of work for so long? And what happens when they ask him, where  
23 did you used to work? Oh, Parkchester. And then they call  
24 Parkchester and what do they say? Oh, he stopped working here  
25 because he was accused of killing somebody. Who is going to

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1 hire him?

2 I submit to you, ladies and gentlemen, he's in his  
3 forties now, he has lost the prime earning years of his life,  
4 he's lost the best years of his life. You heard the economist  
5 testify that he did a calculation, and I submit to you the very  
6 conservative calculations that he lost approximately \$1.3  
7 million for not being able to work from the damage caused by  
8 this prosecution. I ask you to award that money back to him.  
9 Mr. Manganiello didn't ask for this, he did nothing to deserve  
10 this, and he deserves this day to get justice.

11 You also heard that he spent \$110,000 in lawyers fees  
12 defending him against these baseless charges. I am going to  
13 ask you to give him that, too.

14 You heard from Dr. Latif that he has severe  
15 depression, anxiety, and posttraumatic stress disorder. Did  
16 the defendants call any doctor to rebut that? Did they call  
17 any doctor in here to say he doesn't have these serious  
18 conditions and it's not affecting him. They didn't, did they?

19 Ladies and gentlemen, it's a horrible, horrible thing  
20 to live every day in fear, to have weekly panic attacks where  
21 you feel like you're having a heart attack. What does that do  
22 to somebody? How do you go along in life after that when  
23 something like this happens to you?

24 You heard Dr. Latif tell you that he's dependent on  
25 medication and he's barely even functional with medication.

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1 When you go through something like this, it just doesn't go  
2 away, even if you're found not guilty. The stress of what you  
3 lived through remains with you for the rest of your life.

4 Murder is a heinous, heinous crime. It's the one  
5 crime you can't undo. And when someone is accused of murder,  
6 it sticks with them, it's a cloud over their head, it's a mark  
7 on them for life. And Mr. Manganiello did nothing to deserve  
8 it.

9 I ask you to compensate him fairly for the ten days he  
10 spent in jail and would recommend to you, ladies and gentlemen,  
11 \$15,000 per day for that day. For the last seven years he has  
12 had 2,555 days which he has lived with this problem, 2,555  
13 sleepless nights, 2,555 days of living in fear. I recommend to  
14 you, ladies and gentlemen, it's worth \$750,000.

15 It also appears -- it's permanent. He's going to have  
16 this crime for the rest of his life. He's a young man. What's  
17 it like, living without hope? What's it like, living with  
18 nothing to look forward to? What's it like, constantly  
19 thinking about this event over and over and over again in your  
20 mind? They didn't put him in jail. They made him a prisoner  
21 in his own mental world and in his own apartment, which he's  
22 afraid to leave. How traumatized does somebody have to be to  
23 be afraid and nervous about leaving their own apartment?

24 You heard Mario Manganiello tell you that he's not the  
25 same man I once knew. He's a shell of the man that I once

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1 knew.

2 I am going to ask you, ladies and gentlemen, to  
3 compensate him and compensate him for everything these  
4 defendants have taken from him. Remember, you only get one  
5 shot to compensate him now, through the course of all the pain  
6 and suffering and the problems he's going to have throughout  
7 the course of his life.

8 I am also going to ask you to make an award of  
9 punitive damages. As you sit here as a jury, ladies and  
10 gentlemen, you're not only a jury, you're the conscience of our  
11 community. These defendants violated public trust, they abused  
12 their power, and I am going to ask you to use your verdict, if  
13 you award punitive damages, you are going to tell them they  
14 maliciously prosecuted Anthony Manganiello and what they did  
15 was wrong. They crossed lines that should not be crossed.  
16 They trampled on civil rights as if they don't even exist. I  
17 am going to ask you to do justice.

18 So when you think about this case, and you will, when  
19 you are at the grocery store, hardware store or whatever, that  
20 you took this one opportunity to do justice and make sure the  
21 system is fair and give Anthony Manganiello the justice he's  
22 waiting for for seven years. Thank you.

23 THE COURT: Ladies and gentlemen, you've now heard the  
24 summations. Rather than begin the charge now, which will take  
25 hopefully less than an hour, why don't we go to lunch and we

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1 will see you at 1:30, and then we will charge the jury and  
2 you'll have the case by 2:30 or before.

3 Have a good lunch. The case is not yours yet. Please  
4 do not discuss the case amongst yourselves or with anybody  
5 else.

6 (Jury not present)

7 THE COURT: We will see you at 1:30.

8 MS. OKEREKE: Your Honor, the parties are moving -- we  
9 have some motions we would like to discuss before the Court. I  
10 don't know if we do it now.

11 THE COURT: I don't know what kinds of motions you're  
12 talking about.

13 MS. OKEREKE: Defendants would like to make a Rule 50  
14 motion on the record.

15 THE COURT: I told you we are going to reserve  
16 decision on any and all motions and we are assuming that you  
17 made them. I don't know how I can make that clearer.

18 MS. OKEREKE: The motions have not been made yet, your  
19 Honor.

20 THE COURT: I am assuming that the motions were made.

21 MS. OKEREKE: No, your Honor, they were not made.

22 THE COURT: Anything else? See you at 1:30.

23 (Luncheon recess)

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## 1 AFTERNOON SESSION

2 1:30 p.m.

3 THE COURT: I just want to clarify or not really  
4 clarify but maybe not keep it as foggy as it was. The DD5s  
5 that I presume you were interested in, which were P-2 and Z-7,  
6 I think what happened -- I just haven't had time to really read  
7 the transcript in detail. I think what happened is that those  
8 were declared admissible on my list of all the evidence that  
9 was provided so that I could rule on them, but, as I told you  
10 at the outset, I am not anxious having thousands of pieces of  
11 paper before the jury. So the way I limit it, even though I  
12 spend the time to go through all of them, is to make sure that  
13 I only admit those that actually go to the jury, not whether or  
14 not they are admissible; only those that a witness looks at or  
15 talks about or identifies. So far as I am concerned, neither  
16 P-2 nor Z-7 pass that test.

17 On the other hand, from what I can glean from the  
18 transcript hurriedly is there was some conversation about  
19 putting all of them in, all of the DD5s into evidence. I think  
20 they were all marked admissible by me because they are all  
21 business records. I am not sure that I actually ruled on that  
22 issue, but I'm fairly sure that there was no objection.

23 So in an abundance of caution, unless Mr. Joseph has a  
24 different recollection, I'm prepared, if the jury asks, to let  
25 the jury see all of the DD5s, although I'll look at the

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1 transcript more carefully.

2 Mr. Joseph, do you have any problem or thought about  
3 that arrangement?

4 MR. JOSEPH: I do, your Honor. I believe that at one  
5 point the defendants said, Judge, we would like to move the  
6 rest of the DD5s into evidence and your Honor said no. They  
7 indicated that they wanted specific DD5s put in and these two  
8 documents were not put in. I think at this point it would be  
9 error, with all due respect to the Court, to allow a jury to  
10 see a document which was not actually in evidence.

11 THE COURT: I am not sure I understand what you're  
12 saying. In other words, if it happened the way I said it  
13 happened, there was no objection from you about letting in the  
14 balance of the DD5s.

15 MR. JOSEPH: There was, Judge, and I believe your  
16 Honor did sustain the objection. I believe it was the redirect  
17 of -- I'm trying to remember who it was. I believe it was  
18 Agostini. I believe your Honor said denied because at one  
19 point the defendants had introduced basically irrelevant DD5  
20 after irrelevant concerning canvasses, and the Court -- and  
21 they wanted to just introduce in a blanket matter 300 or so  
22 DD5s and I believe the Court said denied. There was no attempt  
23 by defendants to introduce the exhibits which they argued to  
24 before the jury.

25 And frankly, Judge, I would actually request a

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1 curative instruction that they are not to consider the  
2 evidence, the documents which are not in evidence.

3 THE COURT: I don't think there is any question about  
4 not considering documents that aren't in evidence, especially  
5 since I won't be giving them if they want to look at them. But  
6 the transcript that reads like this. Ms. Okereke says:  
7 Finally, your Honor, defendants would just enter into evidence  
8 the remaining DD5s which have yet to be entered into evidence  
9 which I can read if your Honor requires. And I said, we will  
10 just get a list later, which I didn't get, but that's neither  
11 here nor there. You said: For the record, Judge, we stated  
12 the objections that were previously stated. I assume that  
13 meant to the ones that I either admitted or didn't admit at the  
14 beginning of the trial?

15 MR. JOSEPH: That's correct, Judge. We were  
16 maintaining all our objections.

17 THE COURT: I don't think it had anything to do with  
18 the DD5s. All of them in the first instance were business  
19 records, and I didn't have any problem and some of them were  
20 clearly irrelevant, but they weren't sufficiently -- I didn't  
21 think anybody would ask for them or examine about them if they  
22 were fully or totally irrelevant. So then Ms. Okereke said,  
23 defendants have no more questions, and you went onto redirect.

24 I'm not sure that I can characterize your position  
25 anything different than mine; that is, I let in when it was

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1 sought to let in with a list that I've yet to get of the DD5s  
2 that I had held admissible, even though my rule is that I only  
3 take and put into before the jury the DD5 or anything else that  
4 is actually identified by a witness rather than getting a whole  
5 stack of stuff that the jury probably doesn't even want. I am  
6 not sure how you come out, but if I understand you, there isn't  
7 a lot of difference in this transcript.

8 MR. JOSEPH: What I'm saying, Judge, anything that was  
9 not specifically moved into evidence should not be in evidence.  
10 I think we crafted our closing arguments to respond to what's  
11 actually in evidence. After your Honor denied the blanket  
12 attempt to move things in evidence, defendants moved selected  
13 pieces of evidence into evidence or selected DD5s into  
14 evidence. My position is, those are all that's in evidence.

15 Anything that may have been on the sideline that they  
16 didn't put in or directly move into evidence which is relevant,  
17 they can't now, after we have rested, after they have rested,  
18 they had the opportunity at any point on their case which they  
19 didn't call any witnesses, to say, Judge, we also want to put  
20 in the following exhibits, A, B, whatever, and make sure they  
21 are in evidence. They didn't do it. They have closed, they  
22 have rested, their case is closed. I don't think it's proper  
23 now to pick and choose from a list of DD5s that should go  
24 before the jury when there has been no testimony about them --

25 THE COURT: I think you're right. My mistake. If you

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1 read this language, it's hard to see -- I never agreed to let  
2 it in. All I said is, we will just get a list later. It sort  
3 of leads me to the view that I was leaning towards letting them  
4 all in, since I held them all admissible. I agree with you as  
5 a general course of business I never let in anything that  
6 somebody hasn't at least touched.

7 MR. JOSEPH: Judge, frankly, upon defendants' case,  
8 when they started their case, they should have said, Judge, we  
9 would now move into evidence the following exhibits, or at  
10 least give your Honor a list of exhibits that would be in  
11 evidence, but they didn't do that. They rested.

12 MR. ZUCKERMAN: Judge, it was our assumption that they  
13 were in evidence at that time. We moved the remainder of the  
14 DD5s into evidence and they were in. That's the way we  
15 proceeded. And we should be allowed even to discuss those DD5s  
16 that Mr. Joseph objected to to the jury, reopen our closing for  
17 five minutes to address those.

18 THE COURT: You got a choice, either you can forget  
19 reopening your summation or you can forget about letting them  
20 in for the jury to see.

21 MR. ZUCKERMAN: I guess under those circumstances we  
22 have made our objection and we will choose to have the ones --  
23 all the DD5s into evidence and present them to the jury.

24 THE COURT: I think we can assume that that was my  
25 fault, but it's now resolved for better or for worse. I don't

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1 think, frankly, that it's terribly -- the other DD5s are  
2 significant. That's why I admitted them. But, obviously, if  
3 you're trying a case you take out the ones you want and those  
4 are the ones that were taken out by both sides and those are  
5 the ones that the witnesses touched. I am going to leave it at  
6 that and I think probably we can charge the jury if you can  
7 bring them in, unless you have anything else.

8 MR. JOSEPH: Just note our objection for the record.

9 MS. OKEREKE: Your Honor, defendants did want to note  
10 a few objections to the amended court's charge to the jury.

11 THE COURT: I think your time to do that is when I  
12 call you up to the side bar, which is after the charge, not  
13 before the charge.

14 MS. OKEREKE: Okay, your Honor.

15 However, just one more matter for the record.  
16 Although the Court again respectfully has assumed that  
17 defendants' motions will be made at some point, defendants did  
18 want to put on the record that we did intend today to make  
19 motions pursuant to Rule 50 and Rule 59, and, again, we put  
20 that on the record so it is clear in the event the defendants  
21 did need to pursue notice at a later time.

22 MR. JOSEPH: Plaintiff also intended to make some more  
23 motions.

24 THE COURT: It's so clear what I do as a regular  
25 course of business. It is easier to let her talk than for me

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1 to start ruling one way or another when in fact I've made twice  
2 the announcement that I make in every case. But it's fine.  
3 Certainly she has the right to make her objection usually once,  
4 but here we do it two or three times.

5 (Jury present)

6 THE COURT: Ladies and gentlemen, we are now at the  
7 last aspect of any trial, which is the charge. The charge is  
8 divided into three parts. Some of it will sound quite familiar  
9 to you because indeed I mentioned it at the outset when I gave  
10 you a preliminary charge. So the only difference is that now I  
11 read it, so I don't make any mistakes or fewer mistakes, and  
12 it's worthwhile doing for emphasis in any event.

13 Now that the evidence in the case has been presented  
14 and the attorneys for the parties have concluded their closing  
15 arguments, it is my responsibility to instruct you as to the  
16 law that governs this case. You must pay close attention and I  
17 will be as clear as possible. My instructions will be in three  
18 parts.

19 First, I will give you instructions regarding the  
20 general rules that define and govern the duties of a jury in a  
21 civil case; second, I will instruct you as to the legal  
22 elements of the causes of action alleged by the plaintiff; and,  
23 third, I will give you instructions regarding the general rules  
24 governing your deliberations as jurors.

25 It is your responsibility and duty to find the facts

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1 from all the evidence in this case. You are the sole judges of  
2 the facts, not counsel and not I. I want to impress upon you,  
3 again, the importance of that role. It is for you and you  
4 alone to pass upon the weight of the evidence, to resolve such  
5 conflicts as may have appeared in the evidence, and to draw  
6 such inferences as you deem to be reasonable and warranted from  
7 the evidence or the lack of evidence. With respect to any  
8 questions concerning the facts it is your recollection of the  
9 evidence and yours alone that controls.

10 You are to conduct your deliberations as jurors in an  
11 atmosphere of complete fairness and impartiality, without bias  
12 for or against the plaintiff or the defendants. This case  
13 should be considered and decided by you as an action between  
14 parties of equal standing in the community. No party is  
15 entitled to sympathy or favor.

16 It would be improper for you to consider any personal  
17 feelings you may have about one of the parties or their race,  
18 religion, national origin, sex, or age. It would be equally  
19 improper for you to allow any feeling you might have about the  
20 nature of the claim influence you in any way.

21 The parties in this case are entitled to a trial free  
22 from prejudice. You must reach your verdict through a fair and  
23 impartial consideration of the evidence.

24 You have now heard all of the evidence in the case.  
25 Keep in mind that while it is your duty to accept the law from

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1 me, you must apply the facts as you determine them. Once  
2 again, you are the exclusive judges of the facts.

3 You should not single out any instruction as alone  
4 stating the law by which this case should be judged, but you  
5 should consider my instructions as a whole when you retire to  
6 deliberate.

7 Finally, on this issue, you should not, any of you, be  
8 concerned about the wisdom of any rule that I state.

9 Regardless of any opinion that you may have as to what the law  
10 may be, or ought to be, it would violate your sworn or affirmed  
11 duty to base a verdict upon any other view of the law than that  
12 which I give you. Neither you nor I have the right to follow  
13 our predilections about what the law should be. We must both  
14 follow the law as it is and as I charge it to you.

15 Remember, again, you are the sole and exclusive judges  
16 of the facts. You pass upon the weight of the evidence, you  
17 determine the credibility of the witnesses, you resolve  
18 conflicts as there may be in the testimony, and you draw  
19 whatever reasonable inferences you decide to draw from the  
20 facts as you have determined them.

21 I shall later discuss with you how to think about the  
22 credibility, or believability, of the witnesses.

23 In determining the facts, you must rely upon your own  
24 recollections of the evidence. Anything that counsel may have  
25 said while questioning witnesses or during argument is not to

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1       be substituted for your own recollection or evaluation of the  
2       evidence. With respect to a fact matter, nothing I may have  
3       said during the trial, or may say during these instructions,  
4       should be taken in substitution for your own independent  
5       recollection.

6           Because you are the sole and exclusive judges of the  
7       facts, I do not mean to indicate any opinion as to the facts or  
8       what your verdict should be. Indeed, I have no power to tell  
9       you what your verdict should be. If I allude to a fact and  
10       should your recollection differ from mine, it is your  
11       recollection that governs.

12          During the trial, I have been called upon to make  
13       rulings on various questions. Those rulings are not evidence  
14       and need not be considered by you. Procedural matters are  
15       matters of law and, although you may have been curious about  
16       them, you should not consider them.

17          The rulings I have made during the trial are not any  
18       indication of my views of what your decision should be.

19          I also ask you to draw no inference from the fact that  
20       upon occasion I may have asked questions of certain witnesses.  
21       Such questions were only intended for clarification or to  
22       expedite matters and certainly were not intended to suggest any  
23       opinion on my part as to the verdict you should render or  
24       whether any of the witnesses may have been more credible than  
25       any other of the witnesses.

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1                   Your job is to consider only the evidence and find  
2 facts from what you consider to be the believable evidence, and  
3 apply the law as I will later give it to you. Your verdict  
4 will be determined by the conclusions you reach, no matter whom  
5 the verdict helps or hurts. Sympathy and speculation should  
6 play no part in your decision.

7                   Although there are five defendants in this case, it  
8 does not follow from that fact alone that if one defendant is  
9 liable, any of the other defendants is liable. Each defendant  
10 is entitled to a fair consideration of the evidence relating to  
11 that defendant and of that defendant's own defense, and is not  
12 to be prejudiced by any finding you may make for or against any  
13 other defendant. Unless otherwise stated, all instructions I  
14 give you that govern this case are to each defendant separately  
15 and you have an obligation to consider them.

16                  The burden of proof in this case is on the plaintiff  
17 to prove each essential element of his claim by a preponderance  
18 of the evidence. You are most likely familiar with the  
19 standard beyond a reasonable doubt, which is the burden of  
20 proof in a criminal case. That standard does not apply to a  
21 civil case such as this, and you should therefore put it far  
22 from your mind.

23                  To establish a preponderance of the evidence means to  
24 prove that something is more likely so than not so. A  
25 preponderance of the evidence means the greater weight of the

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1 evidence. It refers to the quality and persuasiveness of the  
2 evidence, not to the number of witnesses or documents. If you  
3 find that the credible evidence on an issue is evenly divided  
4 between the parties, that is, equally probable that one side is  
5 right as it is that the other side is right, then you must  
6 decide that issue against the party having this burden of  
7 proof. That is because the party who has to shoulder the  
8 burden of proof must prove more than simple equality of  
9 evidence. The party must prove its claim by a preponderance of  
10 the evidence. On the other hand, the party that has to  
11 shoulder the burden of proof need prove no more than a  
12 preponderance. So long as you find that the scales tip,  
13 however slightly, in favor of the plaintiff, that what the  
14 plaintiff claims is more likely true than not true, then that  
15 party's claim will have been proved by a preponderance of the  
16 evidence.

17 In determining whether any fact has been proved by a  
18 preponderance of the evidence in the case, you may consider the  
19 testimony of all the witnesses, regardless of who may have  
20 called them, and all the exhibits received in evidence,  
21 regardless of who may have introduced them.

22 On that issue, the evidence upon which you are to  
23 decide what the facts are in this case comes either from:

24 1. Sworn testimony of witnesses, including deposition  
25 testimony, both on direct and cross and regardless of who

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1       called the witness; or from

2           2. Exhibits that the Court received in evidence;

3           3. Stipulations. A stipulation of fact, if there is  
4       any, is an agreement among the parties that a certain fact is  
5       true. You must regard such agreed fact as true.

6           What is not evidence. Certain things are not evidence  
7       and are to be disregarded in deciding what the facts are.

8           1. Arguments or statements by lawyers, including  
9       openings and summations;

10           2. Objections to questions;

11           3. Testimony that has been excluded or stricken, or  
12       that you have been instructed to disregard;

13           4. Anything you may have seen or heard outside the  
14       courtroom is not evidence.

15           Credibility. You have had an opportunity to observe  
16       all of the witnesses. It is now your job to decide how  
17       believable each witness was in his or her testimony. You are  
18       the sole judges of the credibility of each witness and of the  
19       importance of his or her testimony.

20           It must be clear to you by now that you are being  
21       called upon to resolve various factual issues, in the face of  
22       the different pictures painted by the plaintiff, and the  
23       defense which cannot be reconciled without your help. You will  
24       now have to decide where the truth lies, and a vital part of  
25       your decision will involve making judgments about the testimony

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1 of the witnesses you have listened to and observed. In making  
2 those judgments, you should carefully scrutinize all of the  
3 testimony of each witness, the circumstances under which each  
4 witness testified, and any other matter in evidence which may  
5 help you to decide which witnesses were telling the truth and  
6 which witnesses were not, and the importance of each witness'  
7 testimony.

8 It is your determination as to a witness' credibility  
9 that counts. Nonetheless, the law has provided some  
10 guidelines. For instance, you should consider the witness'  
11 demeanor. Was the witness candid, frank, and forthright? Or  
12 did the witness seem as if he or she was hiding something,  
13 being evasive or suspect in some way? How did the way the  
14 witness testified on direct examination compare with how the  
15 witness testified on cross-examination? Was the witness  
16 consistent in his or her testimony or did he or she contradict  
17 himself? Did the witness appear to know what he or she was  
18 talking about and did the witness strike you as someone who was  
19 trying to report his or her knowledge accurately?

20 Your decision whether or not to believe a witness may  
21 also depend on whether, or the extent to which, the witness'  
22 testimony is corroborated or supported by other evidence in the  
23 case.

24 Even if the witness was still partial, you should  
25 consider whether the witness had an opportunity to observe the

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1       facts he or she testified about. Ask yourselves whether the  
2       witness' recollection of the facts stands up in light of all  
3       the other evidence.

4           In other words, what you must try to do in deciding  
5       credibility is to size a person up in light of his demeanor,  
6       the explanations given, and in light of all the other evidence  
7       in the case, or the lack of evidence, just as you would in any  
8       important matter where you were trying to decide if a person is  
9       truthful, straightforward, and accurate. In deciding the  
10      question of credibility, remember that you should use your  
11      common sense, your good judgment, and your life experience.

12           Inconsistencies or discrepancies in the testimony of a  
13       witness, or between the testimony of different witnesses, may  
14       or may not cause you to discredit such testimony. Two or more  
15       persons witnessing an incident or a transaction may see or hear  
16       it differently. In weighing the effect of a discrepancy,  
17       always consider whether it pertains to a matter of importance  
18       or an unimportant detail, and whether the discrepancy results  
19       from innocent error or intentional falsehood.

20           If a person is shown to have knowingly testified  
21       falsely concerning any important or material matter, you have a  
22       right to distrust the testimony of such an individual  
23       concerning other matters. You may reject all of the testimony  
24       of that witness or give it such weight or credibility as you  
25       may think it deserves.

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1                   A witness may be inaccurate, contradictory, or even  
2 untruthful in some respects and yet may be entirely credible in  
3 the essence of his or her testimony. It is for you to say  
4 whether his or her testimony in this trial is truthful in whole  
5 or in part, and to give it such weight as you believe it  
6 deserves.

7                   In evaluating the credibility of the witnesses, you  
8 may take into account any evidence that the witness who  
9 testified may benefit in some way from the outcome of this  
10 case. Such an interest in the outcome may sway the witness to  
11 testify in a way that advances his or her own interests.  
12 Therefore, if you find that any witness whose testimony you are  
13 considering may have an interest in the outcome of this trial,  
14 then you should bear that factor in mind when evaluating the  
15 credibility of his or her testimony.

16                   This is not to suggest that every witness who has an  
17 interest in the outcome of a case will testify falsely, or  
18 conversely, that witnesses with no apparent interest in the  
19 case will always tell you the truth. It is for you to decide  
20 to what extent, if at all, the witness' interest has affected  
21 or colored his or her testimony.

22                   Expert witnesses. You have also heard testimony from  
23 an expert witness, Dr. Frank Tinari. An expert witness is an  
24 expert who has special training or experience in a given field  
25 and is permitted to express opinions based on observed or

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1 assumed facts to aid you in deciding the issues in the case.

2 The opinions stated by the expert were based on  
3 particular facts, as the expert obtained knowledge of them and  
4 testified to them before you, or as the attorneys who  
5 questioned the expert asked the expert to assume certain facts.

6 Keep in mind, like any other witness, you may reject the  
7 expert's opinion if you find the facts to be different from  
8 those which form the basis of his opinion. His opinion is not  
9 gospel. You may also reject an opinion if, after careful  
10 consideration of all the evidence in the case, expert and  
11 otherwise, you disagree with that opinion. In other words, you  
12 are not required to accept an expert's opinion to the exclusion  
13 of the facts and circumstances disclosed by other testimony.  
14 Such an opinion is subject to the same rules concerning  
15 reliability as the testimony of any other witness. It is given  
16 to assist you in reaching a proper conclusion. It is entitled  
17 to such weight as you find the expert's qualification in the  
18 field warrant and must be considered by you, but is not  
19 controlling upon your judgment.

20 Keep in mind that the testimony of the expert,  
21 Dr. Tinari, is relevant only to damages, and you should  
22 consider it only if you find one or more of the defendants to  
23 be liable for the malicious prosecution.

24 You have heard the testimony of current and former  
25 police officers and detectives. The fact that a witness may be

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1 employed or formerly employed as a law enforcement official  
2 does not mean that the witness' testimony is necessarily  
3 deserving of more or less consideration or greater or lesser  
4 weight than that of an ordinary witness.

5 It is your decision, after reviewing all the evidence,  
6 whether to accept the testimony of any law enforcement witness  
7 and to give to that testimony whatever weight, if any, you find  
8 it deserves.

9 Direct and circumstantial evidence. We spoke about  
10 this as well in the preliminary charge and may spare you the  
11 subway story, but I think it's worthwhile in going over the  
12 concept.

13 In making your determination, you may consider  
14 evidence which is either direct or circumstantial.

15 Direct evidence is that which a witness testifies that  
16 the witness has perceived. Direct evidence may also be in the  
17 form of an exhibit admitted into evidence.

18 Circumstantial evidence is proof of a chain of facts  
19 and circumstances from which other inferences may be drawn.  
20 You are allowed to make reasonable inferences from particular  
21 facts that are established by direct evidence. This is called  
22 circumstantial evidence.

23 The law does not distinguish between direct and  
24 circumstantial evidence. You may give equal weight to both.  
25 The question in the case is whether, based upon all the

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1 evidence, both direct and circumstantial, the party with the  
2 burden of proof has proved its case by a preponderance of the  
3 evidence.

4 As you can see from the subway story where the people  
5 who get on and the next stop come in with raincoats and  
6 dripping umbrellas, as you can see, the matter of drawing  
7 inferences from facts in evidence is not a matter of guesswork  
8 or speculation. An inference is a logical, factual conclusion  
9 which you might reasonably draw from other facts that have been  
10 proved. You are permitted to draw inferences, but are not  
11 required to do so, from either direct or circumstantial  
12 evidence. In drawing inferences you should exercise your  
13 common sense.

14 Many material facts, such as state of mind, are rarely  
15 susceptible of proof by direct evidence. Usually, such facts  
16 are established by circumstantial evidence. Circumstantial  
17 evidence is of no less value than direct evidence for in either  
18 case you must be convinced that the party with the burden of  
19 proof proved its case by a preponderance of the evidence.

20 There are times when different inferences may be drawn  
21 from facts, whether they are proved by direct or circumstantial  
22 evidence. The plaintiff may ask you to draw one set of  
23 inferences. The defendant may ask you to draw another. It is  
24 for you, and you alone, to decide what inferences you will  
25 draw.

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1                   A witness may be discredited or impeached by  
2 contradictory evidence from other witnesses, or by evidence  
3 that at a prior time the witness had said or done something, or  
4 failed to say or do something which is inconsistent with the  
5 witness' present testimony.

6                   You are not to consider evidence of a prior  
7 inconsistent statement as affirmative evidence in determining  
8 the acts complained of. Evidence of a prior inconsistent  
9 statement was placed before you for the more limited purpose of  
10 helping you decide whether to believe the trial testimony of  
11 the witness who contradicted a prior statement. If you believe  
12 any witness has been impeached and thus discredited, it is your  
13 exclusive province to give the testimony of that witness such  
14 credibility, if any, as you may think it deserves.

15                  The law does not require anybody to call as witnesses  
16 all persons who may have been present at any time or place  
17 involved in the case, or who may appear to have some knowledge  
18 of the matters in issue at this trial. Nor does the law  
19 require any party to produce as exhibits all papers and things  
20 mentioned in this case. Keep in mind, too, that with respect  
21 to witnesses they are equally available to both sides. Put  
22 another way, either side was able to subpoena and call any  
23 witness it chose to call.

24                  If you find that a party could have produced documents  
25 or other evidence in this lawsuit, and that such evidence was

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1 at one time within that party's control or in his or her  
2 custody, and that this evidence would have been relevant in  
3 deciding facts in dispute in this lawsuit, you are permitted,  
4 but not required, to infer that the evidence, if produced,  
5 would have been unfavorable to that party.

6 In deciding whether to draw this inference, you should  
7 consider whether the evidence that was not produced would  
8 merely have duplicated other evidence already introduced. You  
9 may also consider whether the party has offered a reason for  
10 not producing this evidence, and whether that reason was  
11 explained to your satisfaction.

12 Let us move on to part 2. I will now instruct you on  
13 the law applicable to this case. The other thoughts which we  
14 frequently call boilerplate are applicable to just about every  
15 civil case and, for the most part, criminal cases as well. But  
16 now we are going to talk about the law applicable to this case.

17 The plaintiff in this case is Anthony Manganiello.  
18 The plaintiff contends that the defendants -- I've listed them  
19 in alphabetical order -- Shawn Abate, Luis Agostini, Richard  
20 Martinez, Miriam Nieves, and Alex Perez, are liable for  
21 malicious prosecution against the plaintiff in violation of his  
22 constitutional rights.

23 The plaintiff is seeking damages under Section 1983 of  
24 Title 42 of the United States Code, and that section reads in  
25 relevant part as follows:

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1                   Every person who, under color of any statute,  
2 ordinance, custom or usage of state subjects any citizen of the  
3 United States to the deprivation of any rights, privileges, or  
4 immunities secured by the Constitution and laws shall be liable  
5 to the party injured in an action at law.

6                   To establish a claim under Section 1983, the plaintiff  
7 must prove, by a preponderance of the credibility evidence,  
8 each and every one of the following three elements:

9                   First: That the conduct complained of was committed  
10 by a person acting under color of state law;

11                   Second: That the person's conduct deprived the  
12 plaintiff of rights, privileges, or immunities secured by the  
13 Constitution and laws of the United States; and

14                   Third: That the defendants' conduct was the proximate  
15 or legal cause of injury and the resulting damage sustained by  
16 the plaintiff.

17                   Let me now explain each of these elements to you.

18                   The first element of the plaintiff's claim is that the  
19 defendants acted under color of state law. In this case, it is  
20 not disputed that all five defendants were employees of the New  
21 York City Police Department at all the relevant times and as a  
22 consequence of this employment were acting under color of state  
23 law. In other words, the first element is satisfied and you  
24 need not deliberate with respect to it.

25                   The second element of the plaintiff's Section 1983

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1 claim is that he was deprived of a federal constitutional right  
2 by the defendant or the defendant under whom you are  
3 considering at the moment. You are required to determine  
4 whether or not there was a deprivation of a citizen's rights  
5 under the Fourth Amendment of the United States Constitution,  
6 which that amendment, as you may know, guards against  
7 unreasonable searches and seizures. If you find that the  
8 defendant whom you are considering is liable for malicious  
9 prosecution, this is a deprivation of the plaintiff's rights  
10 under the Fourth Amendment and satisfies the second element of  
11 Section 1983.

12 In order to succeed on his claim, the plaintiff is  
13 required to prove by a preponderance of the evidence five  
14 elements; that is, the malicious prosecution aspect includes  
15 five elements:

16 First, the commencement or the continuance of a  
17 criminal proceeding by the defendant whom you are considering  
18 against the plaintiff;

19 Second, the termination of the criminal proceeding in  
20 favor of the plaintiff;

21 Third, the absence of probable cause for the  
22 proceeding;

23 Fourth, malice on the part of the defendant whom you  
24 are considering; and

25 Fifth, that the plaintiff was deprived of his liberty

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1 at some time after his arraignment and before the criminal  
2 proceeding was terminated in his favor.

3 I instruct you that the second element has been met  
4 because the parties have agreed that the criminal proceeding  
5 terminated in the plaintiff's favor; that is, the plaintiff was  
6 acquitted of crimes for which he was charged.

7 I instruct you that the fifth element has been met  
8 because it is clear on this record that the plaintiff was  
9 deprived of his liberty after his arraignment; that is, he was  
10 incarcerated for some period of time before he was released on  
11 bail.

12 It is for you, the jury, to determine whether the  
13 plaintiff has satisfied, by a preponderance of the evidence,  
14 credible evidence, the first, third, and fourth elements of his  
15 malicious prosecution claim, whether the defendant whom you are  
16 considering commenced or continued a criminal proceeding  
17 against the plaintiff, whether there was probable cause to  
18 commence or continue the proceeding, and whether there was  
19 malice on the part of the defendant whom is under  
20 consideration.

21 Now, let me explain each of these three remaining  
22 elements.

23 With respect to whether the defendant commenced or  
24 continued a criminal proceeding against the plaintiff, the  
25 plaintiff must prove that the defendant you are considering

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1       played an active role in the prosecution. This would include  
2       giving advice, encouraging the authorities to act, filing  
3       criminal charges against the plaintiff, being instrumental in  
4       bringing about the criminal charges, and providing false  
5       information to the prosecutors.

6               Probable cause. The next element that you must decide  
7       is whether there was probable cause to commence, for instance,  
8       by an indictment or continue, for instance, by a trial the  
9       criminal proceedings. Probable cause depends upon whether a  
10      reasonably prudent person, based upon all the facts and  
11      circumstances known to him when the prosecution was commenced  
12      or continued, would have believed that the plaintiff was guilty  
13      of the crime with which he was charged. In the plaintiff's  
14      criminal case he was charged with murder in the second degree,  
15      manslaughter in the first degree, and criminal possession of a  
16      weapon in the second degree.

17               The New York penal law states in pertinent part that a  
18      person is guilty of murder in the second degree when with  
19      intent to cause the death of another, he causes the death of  
20      such person.

21               The New York penal law states in pertinent part that a  
22      person is guilty of manslaughter in the first degree when with  
23      intent to cause serious bodily harm to another person, he  
24      causes the death of such person, or with intent to cause the  
25      death of another person, he causes the death of such person

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1 while under the influence of extreme emotional disturbance.

2 The New York penal law states in pertinent part that a  
3 person is guilty of criminal possession of a weapon in the  
4 second degree when with intent to use the weapon unlawfully  
5 against another, such person possesses a loaded firearm.

6 The fact that the plaintiff was ultimately acquitted  
7 of these charges against him is not evidence that the  
8 defendants lacked probable cause when the prosecution was  
9 commenced or continued.

10 You must determine whether or not there was probable  
11 cause to commence, in this instance, by an indictment, or  
12 continue, for instance by a trial, criminal proceedings.

13 The grand jury's indictment of Mr. Manganiello creates  
14 a rebuttable presumption of probable cause. The plaintiff may  
15 overcome this presumption by showing by a preponderance of the  
16 evidence that the defendant whom you are considering did not  
17 make a complete and full statement of facts either to the grand  
18 jury or to the district attorney, that he or she misrepresented  
19 or falsified evidence, or that he or she withheld evidence or  
20 otherwise acted in bad faith, and that this action or omission  
21 by the defendant had an impact on the grand jury's decision to  
22 indict Mr. Manganiello. Put another way, to rebut the  
23 presumption of probable cause created by the grand jury  
24 indictment, the plaintiff must establish by a preponderance of  
25 the evidence that the grand jury's indictment was the result of

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1       fraud, perjury, the suppression of evidence or other police  
2       conduct undertaken in bad faith. Such conduct could include  
3       failing to provide documents or other testimony or providing  
4       false documents, such as a false DD5, or other false testimony,  
5       to either the grand jury or the district attorney, so long as  
6       such conduct by the defendant had an impact on the grand jury's  
7       decision to indict Mr. Manganiello.

8                   Malice. With respect to the fourth element, to show  
9       malice here, the plaintiff must show that the criminal  
10      prosecution was commenced or continued for a purpose other than  
11      to secure a conviction of a guilty person, or that it was  
12      commenced or continued out of ill will or reckless disregard  
13      for the rights of the accused. A prosecution is commenced or  
14      continued with reckless disregard for the rights of the accused  
15      when it is commenced without any reasonable belief that the  
16      accused has actually committed the offense for which he is  
17      charged. If you find that the defendant whom you are  
18      considering did not have probable cause to believe that the  
19      plaintiff committed the crime for which he was charged, you  
20      may, but are not required, to infer that the defendant acted  
21      maliciously.

22                   Proximate cause. The plaintiff must also prove by a  
23      preponderance of the evidence that the conduct of the defendant  
24      whom you are considering was a proximate cause of his injuries.

25                   Proximate cause means that there must be a sufficient

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1 causal connection between a defendants' acts or omissions and  
2 an injury or damage sustained by the plaintiff. An act is a  
3 proximate cause if it was a substantial factor in bringing  
4 about the plaintiff's injuries. The plaintiff's injury or  
5 damage must be either a direct result or a reasonably probable  
6 consequence of the defendants' conduct.

7 Put another way, the issue is whether a reasonable  
8 person would view the defendants' conduct as the cause of the  
9 plaintiff's injuries.

10 There may be more than one proximate cause of an  
11 injury or damage. Many factors or the conduct of two or more  
12 people may operate at the same time, either independently or  
13 together, to cause an injury.

14 The defendants are not liable if the plaintiff's  
15 injuries were the result of an independent cause that  
16 intervened between the defendants' conduct and the plaintiff's  
17 injury, and that produced injuries that were not reasonably  
18 foreseeable by the defendant whom you are considering.

19 I think that finishes the second aspect and we are now  
20 ready to talk to you a little bit about damages.

21 If you find that plaintiff has proven all of the  
22 elements of his claim for relief, you will then consider  
23 damages. You should not interpret the fact that I am giving  
24 instructions about damages now as an indication that I believe  
25 that the plaintiff should, or should not, be awarded damages.

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1       It is your task and yours alone to decide whether the defendant  
2       whom you are considering is liable. Only if you find that a  
3       defendant is liable may you reach the issue of damages.

4           The law permits me to charge you on damages now so  
5       that in the event you decide that one or more of the defendants  
6       are liable and thus you reach the issue of damages, you will  
7       not have to file back and listen to my charge on damages.

8           When a party has caused damage by his conduct, the  
9       injured plaintiff need not prove the existence and amount of  
10       damages with any kind of mathematical certainty. Instead, the  
11       plaintiff need only provide a reasonable basis for determining  
12       the amount of damages.

13           You may award compensatory damages, also known as  
14       actual damages, only for injuries that the plaintiff proves  
15       were caused by the allegedly wrongful conduct of the defendant  
16       whom you are considering. The damages that you award must be  
17       fair compensation, no more and no less. You may not award  
18       compensatory damages for speculative injuries, but only for  
19       those injuries that a plaintiff has actually suffered, or which  
20       he is reasonably likely to suffer in the future.

21           If you find in favor of the plaintiff, then you must  
22       award the plaintiff such sum as you believe will fairly and  
23       justly compensate him for any injury you believe he actually  
24       sustained as a consequence of the conduct of the defendant.

25           You shall award actual damages only for those injuries

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1       which you find that a plaintiff has proven by a preponderance  
2       of the evidence. Moreover, you may not simply award actual  
3       damages for any injury suffered by the plaintiff. You must  
4       award actual damages for those injuries that are a direct  
5       result of actions by a defendant whom you have found is liable  
6       to the plaintiff. Thus, even if you find that a defendant  
7       deprived the plaintiff of his rights, you must ask whether the  
8       plaintiff has proven by a preponderance of the evidence that  
9       the deprivation actually and proximately caused each of the  
10      damages that he claims to have suffered.

11           If you return a verdict for plaintiff, then you must  
12      award him such sum of money as you believe will fairly and  
13      justly compensate him for any injury you believe he actually  
14      sustained, including any pain and suffering, as a result or a  
15      consequence of the conduct of the defendants.

16           The plaintiff is entitled to only one recovery, if at  
17      all, sufficient to reasonably compensate him for his injuries.  
18      I instruct you that if you find that one or more of the  
19      defendants are liable to the plaintiff, you may not award  
20      additional compensation or compensatory damages for the same  
21      injury, even if such injury resulted from more than one  
22      wrongful act from the actions of more than one defendant. If  
23      you can identify separate injuries resulting from separate  
24      violations, you may award an amount of compensatory damages  
25      equal to the total of the damages you believe will fairly and

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1 justly compensate the plaintiff for the separate injuries he  
2 has suffered. But you may not compensate the defendant for the  
3 same injury more than once because you find one or more  
4 defendants to be liable for the same injury.

5 In determining the amount of any damages that you  
6 decide to award, you should be guided by dispassionate common  
7 sense. Computing damages may be difficult, but you must not  
8 let that difficulty lead you to engage in arbitrary guesswork.  
9 You must use sound discretion in fixing any award of damages,  
10 drawing reasonable inferences from the facts in evidence. You  
11 may not award damages based on sympathy or speculation. Your  
12 award must be fair and just. It should neither be excessive  
13 nor inadequate, but it should be reasonable.

14 You are instructed that any person who claims damages  
15 as a result of an alleged wrongful act of another has a duty  
16 under the law to use reasonable efforts to mitigate or minimize  
17 those damages. The plaintiff may not recover in full for  
18 damages that could have been reduced with reasonable effort;  
19 obviously, taking into consideration all the evidence that you  
20 heard about him and his condition.

21 Nominal damages. If you return a verdict for the  
22 plaintiff, but find that the plaintiff has failed to prove by a  
23 preponderance of the evidence that he suffered any actual  
24 damages, then you must award the plaintiff nominal damages not  
25 to exceed the sum of one dollar. Nominal damages are the law's

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1 way of recognizing that constitutional and other rights must be  
2 scrupulously observed, even when these violations have not been  
3 shown to have caused actual injury. You should not award  
4 nominal damages out of sympathy for the plaintiff if you  
5 believe that the plaintiff has failed to prove his case.

6 Punitive damages. If, and only if you have awarded  
7 the plaintiff either compensatory or nominal damages, the law  
8 permits the jury, under certain circumstances, to award the  
9 plaintiff punitive damages in order to punish the wrongdoer or  
10 wrongdoers for the violation of constitutional rights, or some  
11 extraordinary misconduct, and to serve as an example or warning  
12 to others not to engage in such conduct.

13 If you, the jury, should find, from a preponderance of  
14 the evidence, that the conduct of a defendant that proximately  
15 caused injury or damage to the plaintiff was maliciously, or  
16 wantonly, or oppressively done, then you may, in the exercise  
17 of discretion, if you unanimously choose to do so, award such  
18 amount as you shall unanimously agree to be proper as punitive  
19 damages.

20 An act or a failure to act is maliciously done if  
21 prompted or accompanied by ill will, or spite, or grudge,  
22 either toward the injured person individually or toward all  
23 persons in any group or category of which the injured person is  
24 a member.

25 An act or a failure to act is wantonly done if done in

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1       reckless disregard of, or callous disregard of, or indifference  
2       to the rights of another person.

3                   An act or a failure to act is oppressively done if  
4       done in a way or manner that injures, or damages, or otherwise  
5       violates the rights of another person with unnecessary  
6       harshness or severity, as by misuse or abuse of authority or  
7       power, or by taking advantage of some weakness or disability or  
8       misfortune of another person.

9                   Whether or not to make an award of punitive damages is  
10      a matter exclusively within the discretion of the jury. When  
11      awarded, the amount of such extraordinary damages must be fixed  
12      with calm discretion and sound reason and must never be awarded  
13      or fixed in an amount because of any sympathy, or bias or  
14      prejudice with respect to any party in the case. In fixing the  
15      amount of punitive damages, you must consider the degree of  
16      responsibility of the conduct of the defendant whom you are  
17      considering and the relationship between the amount of punitive  
18      damages to any actual harm inflicted upon the plaintiff.

19                   At this stage of the trial you are directed to  
20      determine only if an award of punitive damages is in order. If  
21      you find that punitive damages are in order, I will then  
22      instruct you on how to determine the amount of punitive  
23      damages. There is only one more portion, which is the final  
24      portion of these charges, and they have to do essentially with  
25      your role that you are about to embark upon.

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1                   This case will be decided on the basis of the answers  
2 that you give to certain questions which will be on the verdict  
3 sheet. As you will note from reading the questions, you may  
4 not need to consider certain questions at all depending on your  
5 answer to one or more preceding questions.

6                   In this court, while a jury of six can deliberate and  
7 reach a verdict, if there are more than six, which there are  
8 here, they are not considered alternates, but are full-fledged  
9 jurors. In this case, all eight of you will deliberate. There  
10 is also the rule in this court that the jury must be unanimous.  
11 When all eight of you have agreed on any answer, the foreperson  
12 of the jury will write down the answer in the space provided.  
13 When you have answered the requisite number of questions, the  
14 foreperson will sign the verdict sheet and signal the marshal  
15 that you are ready to report your verdict to the Court. The  
16 foreperson will then be taken through the verdict sheet by my  
17 courtroom deputy.

18                   Do not assume from the facts or from the wording of  
19 the questions or from my instructions on them what the answers  
20 should be or that I have any view about what the answers should  
21 be. Again, I have no power to tell you what the answers should  
22 be.

23                   It is your duty as jurors to consult with one another  
24 and to deliberate with a view to reaching an agreement. Each  
25 of you must decide the case for himself or herself, but you

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1 should do so only after a consideration of the case with your  
2 fellow jurors, and you should not hesitate to change an opinion  
3 when convinced that it is erroneous. You are not bound to  
4 surrender your honest convictions concerning the effect or  
5 weight of the evidence for the mere purpose of returning a  
6 verdict based on the opinion of other jurors. Discuss and  
7 weigh your respective opinions dispassionately, without regard  
8 to prejudice or favor for either party, and adopt that  
9 conclusion which in your good conscience appears to be in  
10 accordance with the truth.

11                   Once you get into the jury room, the foreperson, juror  
12 no. 1, unless you agree on another, will be responsible for  
13 signing all communications to the Court and for handing them to  
14 the marshal during your deliberations.

15                   If during your deliberations you want to see any of  
16 the exhibits, you may request that they be brought into the  
17 jury room. If you want any of the testimony read, you may also  
18 request that. Please remember that it is not always easy to  
19 locate what you might want, so be as specific as you possibly  
20 can. In requesting portions of the testimony, let me know the  
21 name of the witness, the subject matter, and, if possible and  
22 appropriate, direct or cross.

23                   In addition, you may request to see any portion or all  
24 of my instructions on the law.

25                   Your requests for exhibits, or testimony, in fact any

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1       communications with the Court, should be made to me in writing,  
2       signed by your foreperson, and given to one of the marshals.

3       In any event, do not tell me or anyone else how the jury stands  
4       on any issue until a unanimous verdict has been reached.

5               Finally, members of the jury, if you remain seated  
6       where you are briefly while I confer with counsel to see if  
7       there are any additions or corrections they would like to make.  
8       In this regard, I ask you not to discuss the case while seated  
9       in the box because there is the possibility that I might find  
10      it proper to give you additional instructions which you may not  
11      presently have received. Please remain where you are just for  
12      a few minutes, and we will come back to you and give you a  
13      verdict sheet and send you on your way.

14               Would the lawyers come to the side bar.

15               (At the side bar)

16               THE COURT: As I have indicated, I have marked as  
17       court exhibits each of the items that you've provided me with.  
18       Court Exhibit 5 is the plaintiff's proposed verdict sheet.  
19       Court Exhibit 4 is the defendants' proposed verdict sheet.  
20       Court Exhibit 3 is the plaintiff's proposed instructions to the  
21       jury. Court Exhibit 2, I hope -- I don't know where Court  
22       Exhibit 2 is. I think it's attached.

23               THE LAW CLERK: It's attached to the objections, the  
24       letter.

25               THE COURT: And Court Exhibit 1 is a letter from the

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1      Corporation Counsel, dated June 21, which has all of the  
2      concerns that they had as of Saturday evening.

3              Please don't tell me anything about any of what I've  
4      gotten and looked at and reviewed. I have a verdict sheet.  
5      Have you seen the verdict sheet?

6              MR. JOSEPH: I believe I have, Judge.

7              THE COURT: Have you seen the verdict sheet?

8              MR. ZUCKERMAN: Yes, we saw it this morning.

9              THE COURT: Is there anything other than in these  
10     exhibits which you're now protected by?

11             MS. OKEREKE: Yes, your Honor. There is nothing in  
12     the jury charge or the verdict sheet which reflects a qualified  
13     immunity defense.

14             THE COURT: I am going to give you a copy of the 2007  
15     Court of Appeals decision because you apparently didn't get my  
16     drift at the charging conference. What it says is that at this  
17     juncture all that you're supposed to do is get from the jury a  
18     little bit of the factual feelings they have so that the judge  
19     can make that decision, and indeed that's exactly what I did in  
20     my verdict sheet and that's precisely what the Second Circuit  
21     asked me to do. But you have an objection. Anything else?

22             MS. OKEREKE: Yes. Additionally, to instruction 2,  
23     the portion -- I don't remember the exact instruction number.  
24     It's not No. 2. But the portion where it reads: The documents  
25     in this lawsuit that defendants are -- or the jury is to

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1 determine whether or not they found that individuals did not  
2 produce evidence or other documents in this lawsuit, it's not  
3 clear. Defendants just object to it.

4 THE COURT: Very well.

5 MS. OKEREKE: Additionally, defendants would request  
6 that the jury be instructed that they have heard several  
7 different -- probable cause mentioned several times in  
8 different contexts, in the context of a search warrant, in the  
9 context of an arrest, but this case is about malicious  
10 prosecution and it's a separate probable cause determination.

11 THE COURT: Denied.

12 MS. OKEREKE: Two more. We would also request an  
13 instruction that the jury be charged that only the testimony  
14 that they are to consider, whether it was truthful or not, was  
15 that given during the grand jury hearing.

16 THE COURT: I don't understand. Didn't you have a  
17 chance in this letter I only got the day before yesterday --

18 MS. OKEREKE: These are all addressed to the  
19 amendments which were added from the charging conference on  
20 Friday.

21 THE COURT: But indeed this letter dated the 21st  
22 should have included any of them.

23 MS. OKEREKE: These address the amendments that we  
24 received today. For instance --

25 THE COURT: Indeed, I told you that Saturday evening